

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

DLB-JSW-HC
1-9-70

673

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,051

PENNSYLVANIA GAS AND WATER COMPANY,
Petitioner.

v.

FEDERAL POWER COMMISSION,
Respondent.

THE MANUFACTURERS LIGHT AND HEAT COMPANY
and HOME GAS COMPANY,
Intervenors

*Petition To Review Orders of the
Federal Power Commission*

JOINT APPENDIX

United States Court of Appeals
for the District of Columbia Circuit

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Nathan J. Paulson
CLERK

PETER H. SCHIFF, Solicitor
Federal Power Commission,
441 G Street, N.W.
Washington, D.C. 20426
Attorney for Respondent

EDWARD B. CALLAND
800 Union Trust Building
Pittsburgh, Pennsylvania 15219
Attorney for Intervenors

REUBEN GOLDBERG
ALLAN FREIDSON
1250 Connecticut Ave., N.W.
Washington, D.C. 20036
Attorneys for Petitioner

TABLE OF CONTENTS

<u>Record P. No.</u>		<u>Printed P. No.</u>
153	Excerpts from FPC Gas Tariff, Fifth Revised Volume No. 1 of the Manufacturers Light and Heat Company	1
178	Joint Application of the Manufacturers Light and Heat Company and Home Gas Company to Coordinate Operations.....	12
386	Notice of Application (July 3, 1968)	32
394	Petition to Intervene of Pennsylvania Gas and Water Company	33
434	Joint Application of the Manufacturers Light and Heat Company and Home Gas Company for a Temporary Certificate	38
444	Answer of Pennsylvania Gas and Water Company to Application for Temporary Certificate ...	45
464	Statement in Support of Application for Temporary of Orange and Rockland Utilities, Inc.	59
468	Statement in Support of Application for Temporary of Central Hudson Gas & Electric Corporation	62
473	Answer of Manufacturers Light and Heat Company and Home Gas Company to Pennsylvania Gas and Water Company's Answer in Opposition to Application for Temporary Certificate	63
490	Letter-Order Issuing Temporary Certificate (March 17, 1969)	69
496	Letter of Pittsburgh Group Companies Advising Advising of Commencement of Coordinated Operations and Suspension of Service Agreement	71
503	Application for Rehearing and Stay of Letter-Order Issued March 17, 1969	72
538	Order Denying Rehearing	84

GENERAL TERMS AND CONDITIONS
(Cont'd.)

6. POSSESSION OF GAS AND WARRANTY OF TITLE

6.1 Control of gas. Seller shall be deemed to be the owner and in control and possession of the gas hereunder until it shall have been physically delivered to Buyer at the point or points of delivery, after which Buyer shall be deemed to be the owner and in control and possession thereof.

6.2 Division of responsibility. Buyer shall have no responsibility with respect to any gas hereunder until it is physically delivered to Buyer, or on account of anything which may be done, happen or arise with respect to said gas before such delivery; and Seller shall have no responsibility with respect to said gas after such delivery to Buyer, or on account of anything which may be done, happen or arise with respect to said gas after such delivery.

6.3 Warranty of title. Seller agrees that it will, and it hereby does, warrant that it will at the time of physical delivery have good title to all gas delivered by it to Buyer, free and clear of all liens, encumbrances and claims whatsoever, that it will at such time of delivery have good right and title to sell said gas as aforesaid, that it will indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas.

7. FORCE MAJEURE

Neither Seller nor Buyer shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and

GENERAL TERMS AND CONDITIONS
 (Cont'd.)

any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension.

Such causes or contingencies affecting the performance hereunder by either Seller or Buyer, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve either party from its obligations to make payments of amounts then due hereunder in respect of gas theretofore delivered.

8. BILLING AND PAYMENT

8.1 Billing. On or before the tenth (10th) day following the date of the final monthly meter reading for each billing month, Seller shall render to Buyer a statement of the total amount of gas delivered during the preceding billing month and the amount due.

When information necessary for billing purposes is in the control of Buyer, Buyer shall furnish such information to Seller on or before the fifth (5th) day following the date of final meter reading of each month.

Both Seller and Buyer shall have the right to examine, at reasonable times, books, records and charts of the other to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions hereof.

8.2 Payment. Buyer shall pay Seller at its general office, 800 Union Trust Building, Pittsburgh, Pennsylvania, or at such other address as Seller shall designate, on or before the twentieth (20th) day following the date of the final

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FPC GAS TARIFF
FIFTH REVISED VOLUME NO. 1

AUG 31 1965
Original Sheet No. 48

GENERAL TERMS AND CONDITIONS
(Cont'd.)

monthly meter reading for the gas delivered hereunder during the preceding billing month.

If presentation of a bill by Seller is delayed after the tenth (10th) day following the date of final monthly meter reading, then the time of payment shall be extended accordingly unless Buyer is responsible for such delay.

Should Buyer fail to pay all of the amount of any bill as herein provided when such amount is due, interest on the unpaid portion of the bill shall accrue at the rate of six percent (6%) per annum from the due date until the date of payment. If such failure to pay continues for thirty (30) days after payment is due, Seller, in addition to any other remedy it may have hereunder, may, after application to and authorization by the governmental authority having jurisdiction, suspend further delivery of gas until such amount is paid; provided, however, that if Buyer in good faith shall dispute the amount of any such bill or part thereof and shall pay to Seller such amounts as it concedes to be correct and, at any time thereafter within thirty (30) days of a demand made by Seller, shall furnish good and sufficient surety bond in an amount and with surety satisfactory to Seller, guaranteeing payment to Seller of the amount ultimately found due upon such bills after a final determination which may be reached either by agreement or judgment of the courts, as may be the case, then Seller shall not be entitled to suspend further delivery of gas unless and until default be made in the conditions of such bond.

8.3 Adjustment of billing errors. If it shall be found that at any time or times Buyer has been overcharged or undercharged in any form whatsoever under the provisions hereof and Buyer shall have actually paid the bills containing such overcharge or undercharge, then within thirty (30) days after the final determination thereof, Seller shall refund

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Vice President
Issued on: August 31, 1965

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FEDERAL POWER COMMISSION
Original Sheet No. 49

GENERAL TERMS AND CONDITIONS.
(Cont'd.)

the amount of any such overcharge and Buyer shall pay the amount of any such undercharge. In the event an error is discovered in the amount billed in any statement rendered by Seller, such error shall be adjusted within thirty (30) days of the determination thereof, provided that claim therefor shall have been made within thirty (30) days from the date of discovery of such error, but in any event within twelve (12) months from the date of such statement. If the parties are unable to agree on the adjustment of any claimed error, any resort by either of the parties to legal procedure, either at law, in equity or otherwise, shall be commenced within fifteen (15) months after the supposed cause of action is alleged to have arisen, or shall thereafter be forever barred.

9. SERVICE AGREEMENT

9.1 Form of Service Agreement. Buyer shall enter into a contract with Seller under Seller's applicable standard Form of Service Agreement; provided, however, that a contract between Seller and Buyer which was in effect on the effective date of this Tariff, shall remain in effect and shall be considered as an executed service agreement to the extent that its provisions are not superseded by or in conflict with the provisions of this Tariff until such contract is replaced or superseded.

9.2 Term. The period of time to be covered by the Service Agreement shall be determined by agreement between the parties but shall not exceed twenty (20) years; provided, however, that where the Service Agreement supersedes or cancels an existing Contract, Seller may require that the term of the Service Agreement shall be not less than the unexpired portion of the term contained in the Contract to be superseded or cancelled. Such Service Agreement shall continue from year to year after the expiration of the fixed term unless cancelled by either party at the end of any such yearly period by written notice given as prescribed in the Service Agreement but not less than

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FEDERAL POWER COMMISSION
 Original Sheet No. 50

GENERAL TERMS AND CONDITIONS
 (Cont'd.)

six (6) months prior to the proposed date of cancellation.

9.3 Volumetric obligations and requirements. At the time of execution of the Service Agreement, Seller and Buyer shall agree upon the quantities of gas to be sold and purchased.

9.4 Successors and assigns. Any company which shall succeed by purchase, merger or consolidation to the gas properties substantially as an entirety, of Seller or of Buyer, as the case may be, and any Affiliated Successor in Interest which shall acquire from Seller the properties of Seller used in Interstate Commerce in rendering service to Buyer, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under the Service Agreement; and either party may assign or pledge the Service Agreement under the provisions of any mortgage, deed of trust, indenture or similar instrument which it has executed or may execute hereafter; provided, however, such mortgage, deed of trust, indenture or similar instrument shall cover the properties of such party as an entirety unless such party is an Affiliated Successor in Interest as above; otherwise neither party shall assign the Service Agreement or any of its rights thereunder unless it first shall have obtained the consent thereto in writing of the other party.

9.5 Waiver of default. No waiver by either party of any one or more defaults by the other in the performance of any provisions of the Service Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

10. CONTRACT DEMAND

10.1 Establishment of Contract Demand. The amount of the Contract Demand shall be specified in the Service Agreement between Seller and Buyer. In the event Buyer has not entered into a Service Agreement with

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MAR 15 2 13 PM '68
GENERAL TERMS AND CONDITIONS

(Cont'd.)

Seller wherein a definite daily volume is specified as the Contract Demand, then the effective Contract Demand, until changed as herein provided, shall be the daily volume which Seller has notified Buyer it will be able to supply to Buyer, but not greater than the maximum daily volume which Buyer has notified Seller it will require.

10.2 Changes in Contract Demand. Changes in the Contract Demand shall be made in anyone of the following ways:

(a) In the event Buyer shall desire to increase the then effective Contract Demand after the expiration of the development period, it shall, on or before March 15th in any year, notify Seller as to the total amount of such desired increase, and the date on which it desires such increase to become effective, but not later than December 1 of such year. Seller shall determine whether in its judgment, giving due consideration to its obligations to all of its customers, it will have available gas supply and pipeline capacity adequate to deliver such proposed additional volume of natural gas to Buyer on the date on which it desires such increase to become effective.

Seller shall, by June 15th in any such year, notify Buyer whether or not it will be able to deliver such additional volume of gas to Buyer on the date specified by Buyer. In the event Seller notifies Buyer that it will be able to deliver such additional volume of gas, the increased Contract Demand shall

Superseded

MAR 15 2 13 PM '68
GENERAL TERMS AND CONDITIONS
(Cont'd.)

become effective on the date specified by Buyer in its notice, unless the parties shall mutually agree upon some other date.

If Seller determines that the requested additional supply of gas is not available, it shall use due diligence in an effort to obtain or cause to be obtained all authorizations, materials and additional gas supply from any reasonably available source which may be necessary to enable it to deliver such proposed additional volume of gas to Buyer.

(b) Subject to the provisions of Sub-section (a) of this Section 10.2, in the event a Buyer not purchasing from Seller under Rate Schedule WS desires to decrease the then effective Contract Demand, after the expiration of the development period, it shall on or before March 15 in any year notify Seller of the total amount of such desired decrease. The Contract Demand currently in effect shall never be decreased in any twelve (12) months' period by more than five percent (5%) of the greatest Contract Demand previously at any time in effect, and the aggregate amount of all such decreases made under the provisions of this paragraph shall never operate to reduce the Contract Demand to less than ninety percent (90%) of said greatest Contract Demand previously at any time in effect. If the amount of the decrease desired by Buyer be in accordance with the foregoing limitations, then the decreased Contract Demand shall become effective on the next anniversary of the effective date of the service agreement.

(c) Subject to the provisions of Sub-section (d) of this Section 10.2, in the event a Buyer

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Mar 15 2 13 PM '68

GENERAL TERMS AND CONDITIONS
 (Cont'd.)

is also purchasing under Seller's Rate Schedule WS and desires to decrease Buyer's then effective total maximum quantity (which, for purposes of this Section, shall mean the sum of Buyer's Maximum Daily Quantity under Rate Schedule WS and Buyer's Contract Demand), Buyer shall on or before March 15 in any year notify Seller of the total amount of such desired decrease. Such decrease in any twelve (12) months' period shall never be more than five percent (5%) of the greatest total maximum quantity previously at any time in effect and the aggregate amount of all such decreases made under the provisions of this sub-section (c) shall never operate to reduce Buyer's total maximum quantity by more than ten percent (10%) of the greatest total maximum quantity previously at any time in effect. Such decreases in Buyer's total maximum quantity may be accomplished in either of the following ways:

- (1) Buyer may elect to reflect such decrease in Buyer's currently effective Maximum Daily Quantity under Rate Schedule WS; provided, however, that (a) such decrease in Buyer's Maximum Daily Quantity in any twelve (12) months' period shall never be more than five percent (5%) of the greatest total maximum quantity previously at any time in effect and (b) the aggregate amount of all decreases in Buyer's Maximum Daily Quantity shall never operate to reduce Buyer's total maximum quantity by more than ten percent (10%) of the greatest total maximum quantity previously at any time in effect;
- (2) Buyer may elect to apportion such decrease between Rate Schedule WS

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MAR 15 2 13 PM '68

GENERAL TERMS AND CONDITIONS
(Cont'd.)

and Rate Schedule CDS. In such event, the reduction in Contract Demand shall in any twelve (12) months' period be no more than that proportion of five percent (5%) which the Contract Demand was of Buyer's greatest total maximum quantity previously at any time in effect and the aggregate amount of all such decreases made under the provisions of this paragraph shall never operate to reduce the Contract Demand by more than that proportion of ten percent (10%) which the Contract Demand was of Buyer's greatest total maximum quantity previously at any time in effect. In the event that Buyer elects to decrease its Contract Demand, Buyer's allowable percentage decreases in Maximum Daily Quantity under paragraph (1), above, shall be reduced accordingly.

- (3) If the amount of a decrease desired by Buyer be in accordance with the foregoing limitations, then such decrease shall become effective on the next anniversary of the effective date of the service agreement.
- (d) Sub-sections (b) and (c) of this Section 10.2 are subject to the following provisos:

- (1) Reductions shall not be made which result, during the first twelve months to which the reduction is applicable, in the transfer of firm maximum day pipeline purchase requirements from Seller to "Other Sources";

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10

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THE MANUFACTURERS LIGHT AND HEAT FEDERAL POWER
FPC GAS TARIFF COMMISSION
FIFTH REVISED VOLUME NO. 1

Fifth Revised Sheet No. 80
Superseding
Fourth Revised Sheet No. 80

INDEX OF PURCHASERS

<u>Fifth Revised Volume No. 1</u>	<u>Key to Map</u>	<u>Rate Schedule</u>	<u>Execution Date</u>	<u>Effective Date</u>	<u>Expiration Date</u>
Acme Natural Gas Company	1	(CDS-1 (WS	7- 5-67 3- 8-66	11-27-67 11- 1-66	11- 1-87 11- 1-85
Anderson Gas Company	16	CDS-1	11-14-67	11- 1-67	5-15-84
Blacksville Oil and Gas Company	29	SGS-1	8-12-68	11- 1-68	11- 1-88
Columbia Gas of Maryland, Inc. (formerly Hagerstown Gas Company)	7	(CDS-1 & WS	7- 1-68	11- 1-68	11- 1-88
Columbia Gas of New York, Inc.	9	(CDS-1 & WS	7- 1-68	11- 1-68	11- 1-88
Columbia Gas of Pennsylvania, Inc. Various		(CDS-1 & WS	10-29-68	11- 1-68	11- 1-88
Elizabethtown Gas Company (formerly Northwest Jersey Nat. Gas, Inc.)	6	CDS-1	1- 1-69	2- 2-69 1/	1- 1-89
Home Gas Company	8	CDS-1	10-23-68	11- 1-68	11- 1-88
Kane Gas Light & Heating Company	17	CDS-1	8-30-68	11- 1-68	11- 1-88
Murphy Gas, Inc.	26	SGS-1	8- 1-67	11- 1-67	11- 1-87
The Ohio Fuel Gas Company	10	(CDS-1 & WS	5-17-68	11- 1-68	11- 1-88

1/ Per FPC letter dated January 29, 1969

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THE MANUFACTURERS LIGHT AND HEAT COMPANY
FPC GAS TARIFF
FIFTH REVISED VOLUME NO. 1

^{FED} 7 1969
FEDERAL POWER
COMMISSION

Fifth Revised Sheet No. 81
Superseding
Fourth Revised Sheet No. 81

INDEX OF PURCHASERS

<u>Fifth Revised Volume No. 1</u>	<u>Key to Map</u>	<u>Rate Schedule</u>	<u>Service Agreements</u>		
			<u>Execution Date</u>	<u>Effective Date</u>	<u>Expiration Date</u>
The Ohio Valley Gas Company	Various	(CDS-1 & WS)	4-24-68	11- 1-68	11- 1-88
Penn Fuel Gas Companies 1/	3	(CDS-1 & WS)	6-25-68 4-23-68	11- 1-68 11- 1-68	11- 1-88 11- 1-88
Pennsylvania Gas and Water Company	19.	(CDS-1 & WS)	11-15-67 5-17-67	11- 1-67 7- 1-67	11- 1-85 11- 1-85
The Peoples Natural Gas Company	11	(CDS-1 & WS)	11- 9-67	11- 1-67	5-25-80
Taylorstown Natural Gas Company	27	SGS-1	11- 9-62	2- 2-63	2- 2-83
The United Gas Improvement Co.	12	(CDS-1 & WS)	4-23-68	11- 1-68	11- 1-88
United Natural Gas Company	13	CNS-1	11-15-67	11- 1-67	12- 1-84
York County Gas Co.	15	(CDS-1 & WS)	4-23-68	11- 1-68	11- 1-88
Equitable Gas Co.	-	ES-1	2-11-52	4- 1-52	Indefinite
The Peoples Natural Gas Co.	-	ES-1	3-25-49	5- 1-49	Indefinite
United Natural Gas Co.	-	ES-1	3-25-49	5- 1-49	Indefinite

1/ The Penn Fuel Gas Companies referred to are: Bangor Gas Company; Clearfield Gas Company; Counties Gas Company; Curwensville Gas Company; Emmitsburg Gas Company; Jersey Shore Gas Company; Lock Haven Gas Company; Oxford Gas Company; Renovo Gas Company; Stroudsburg Gas Company and Waynesboro Gas Company.

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Vice President
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178

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of)
 The Manufacturers Light and Heat Company) Docket No. CP68-364
 and)
 Home Gas Company)

ABBRIVIATED JOINT APPLICATION OF
 THE MANUFACTURERS LIGHT AND HEAT COMPANY
 AND
 HOME GAS COMPANY
UNDER SECTION 7 OF THE NATURAL GAS ACT, AS AMENDED,
FOR AUTHORIZATION TO COORDINATE THEIR OPERATIONS

The Manufacturers Light and Heat Company (Manufacturers) and Home Gas Company (Home) hereby make this abbreviated, joint application to the Federal Power Commission (Commission) in accordance with the provisions of Section 7 of the Natural Gas Act, as amended, and the Rules and Regulations of the Commission for a certificate of public convenience and necessity authorizing the coordination of their operations as herein-after described.

179

II

DESCRIPTION OF EXISTING OPERATIONS

Home is a natural gas company engaged in the transportation and sale of natural gas at wholesale in the State of New York. Home purchases its entire supply of gas from its affiliate, Manufacturers,^{1/}

^{1/} Except for minor quantities which Home purchases from local production in New York.

at two separate locations at the state line between New York and Pennsylvania. Home operates three storage fields in the State of New York. Home sells gas at wholesale to its affiliate, Columbia Gas of New York, Inc., and to certain nonaffiliated wholesale customers. Home's principal nonaffiliated wholesale customers are Orange and Rockland Utilities, Inc. (Rockland) and Central Hudson Gas and Electric Corporation (Central Hudson), both located in the eastern area of Home's system in New York.

Applicant, Manufacturers, is a natural gas company whose jurisdictional business consists of the production, purchase, storage, transportation, and sale of natural gas at wholesale in Pennsylvania, Ohio and West Virginia. Manufacturers also sells natural gas at retail in northern West Virginia. One of the principal wholesale accounts of Manufacturers is Home, to which deliveries of natural gas are made at the Pennsylvania-New York state boundary near Olean, New York, in the west, and near Port Jervis, New York, in the east.

III

PROPOSED COORDINATED OPERATIONS

In order to provide greater operating flexibility, to make available the underground storage fields of Home and Manufacturers on a combined basis and to permit Manufacturers to optimize gas purchases, Manufacturers and Home seek authorization to coordinate their future jurisdictional operations commencing November 1, 1968. Under coordinated operations, the present service agreement between Manufacturers and Home would be cancelled, Manufacturers would discontinue the separate billing of interstate gas to Home and the market requirements of the customers of Manufacturers and Home would be furnished in a manner which would utilize most effectively the interstate pipeline and storage facilities

of Manufacturers and Home to the maximum advantage of both companies. Jurisdictional sales hereafter by Manufacturers and Home would be made under a joint FPC gas tariff containing the provisions set forth in Exhibit F. The joint tariff would supersede and cancel the FPC gas tariffs of Manufacturers and Home currently in effect. This proposal thus contemplates that Manufacturers and Home would operate as a single unit for all FPC regulatory and ratemaking purposes. Actions taken pursuant to coordinated operations would only be such actions as are subject to the exclusive jurisdiction of this Commission.

Manufacturers and Home believe that authorization of coordinated operations will be in the immediate and long-range interests of consumers served on both of their systems. Moreover, certain recent developments, as hereinafter described, make it imperative that coordinated operations receive the Commission's prompt consideration.

For approximately ten years Rockland and Central Hudson, the major nonaffiliated wholesale customers of Home, have purchased gas from Home at approximately 40 percent load factor. The 40 percent load factor pattern of purchases has existed since 1958 and resulted from the Commission's authorization of Rockland and Central Hudson to purchase gas from Tennessee Gas Pipeline Company. See Tennessee Gas Transmission Company, -14 F.P.C. 544 (1955). For the reasons described below, this pattern of purchases by Rockland and Central Hudson is now subject to substantial change.

On May 31, 1968, Manufacturers filed with this Commission a motion seeking approval of a settlement of the proceedings at Docket No. RP66-5. The settlement between Manufacturers and its customers contains the following rates of future application:

CDS-Demand	\$ 3.53
CDS-Commodity	26.00¢
CDS-Excess Volumes	11.61¢
WS-Demand	\$ 1.18
WS-Contract Quantity	1.80¢
WS-Excess	47.00¢
SGS-1	60.00¢
ES-1	39.61¢
SR-1	39.61¢
EX-1	75.00¢

Similarly, on June 4, 1968, Home filed a motion requesting Commission approval of a settlement of the proceedings at Docket No. RP66-6. The settlement between Home and its customers contains the following rates of future application:

CDS-Demand	\$ 4.08
CDS-Commodity	31.00¢
CDS-Excess Volumes	13.41¢
WS-Demand	\$ 1.71
WS-Contract Quantity	3.10¢
WS-Excess	49.00¢
ES-1	44.41¢
SR-1	44.41¢
EX-1	80.00¢

The original 1968 gas estimates submitted to Home by Rockland (see Exhibit Z-1) and Central Hudson (see Exhibit Z-2) reflected their historical low load factor of purchases. Based upon the foregoing prospective rates for Home, however, and particularly the proposed commodity rate level of 31¢ per Mcf, Rockland and Central Hudson have advised that they will fill the valley in their purchases and that their future takes from Home will be at a substantially higher load factor. Exhibit Z-3 is a letter from Rockland to Home so advising of Rockland's intent; Exhibit Z-4 is the covering letter to Central Hudson's original estimate (see Exhibit Z-2) stating that Central Hudson would increase its purchase load factor to 100 percent. For the 12 months ending October 31, 1969, this will entail the delivery of additional volumes by Home to such customers of 6,604,100 Mcf (see Exhibit Z-5).

183

The 1968 Estimates of Gas Requirements and Gas Available of Manufacturers and Home (1968 Blue Book; see Exhibit I to the Application of United Fuel Gas Company at Docket No. CP68-285) have been revised to reflect the changes required in the operations of Manufacturers and Home in order to supply the increased annual sales to Rockland and Central Hudson. The revised estimates have been prepared both on the basis of assumed Commission approval of coordinated operations (as proposed in this application) and, alternatively, assuming that the present, noncoordinated mode of operation will continue in the future. Exhibit I, pp. 1-2 as to Manufacturers and pp. 3-4 as to Home, reflects the revised estimates of gas requirements and gas available based upon noncoordinated operations. Exhibit I, pp. 5-6 reflects the revised estimates based upon Commission approval of coordinated operations.

As more fully discussed herein, the continuation of the operations of Manufacturers and Home on a noncoordinated basis in the future would necessitate a substantial increase in Home's Contract Demand with Manufacturers (to Home's serious detriment, since only added annual volumes will be sold to Rockland and Central Hudson at Home's commodity rate), ^{2/} an increase in Manufacturers' Contract Demand with United Fuel Gas Company (United Fuel), the idling of Home's underground storage facilities, the construction of additional facilities by Manufacturers, and a less efficient utilization of facilities. In contrast, authorization of coordinated operations would avoid these effects and would promote improved efficiency and economy.

^{2/} Home presently purchases at 100 percent load factor from Manufacturers. Accordingly, the sale of additional annual volumes to Rockland and Central Hudson on a noncoordinated basis would require Home to increase its Contract Demand with Manufacturers.

The comparative economics of coordinated versus noncoordinated operations on Manufacturers and Home are reflected in Exhibit Z-6. Before discussing this exhibit, however, the following salient differences between the two programs should be noted.

Under coordinated operations, Manufacturers has an ample valley in its purchases from United Fuel to handle the 6,604,100 Mcf increase in the annual requirements of Rockland and Central Hudson. Manufacturers would also have available to it, by displacement, storage capacity on the Home system which otherwise will be idled when the annual purchases by Rockland and Central Hudson increase to near 100 percent load factor. This additional storage capability, plus the increased sales to Rockland and Central Hudson, would enhance the utilization of facilities.

Exhibit G hereto contains flow diagrams reflecting coordinated operations of the systems of Manufacturers and Home on the design day of the 1968-69 winter. Assuming Commission approval of coordinated operations, the existing facilities of Manufacturers and Home are adequate to supply their revised requirements (see Exhibit I, pp. 5-6) during such winter. Page 1 of Exhibit G-1 reflects that under coordinated operations the present facilities will have unallocated capacity of 9,000 Mcf per day.

In the event Manufacturers and Home continue to operate on a noncoordinated basis, the immediate effect on Home would be a substantial loss. In order to supply the increased volumes in question to Rockland and Central Hudson, Home would have to increase its Contract Demand with Manufacturers to 94,500 Mcf as of November 1, 1968 (see Exhibit I, p. 1). Rockland and Central Hudson, on the other hand, propose no commensurate increase in their respective Contract Demands with Home. Rather, they plan to maximize purchases under their present contracts. Accordingly, Home would receive only commodity revenues while incurring both demand and commodity costs from Manufacturers.

185

Moreover, the increase in Home's Contract Demand to 94,500 Mcf would require Manufacturers, in turn, to acquire additional peak day volumes from United Fuel. Under noncoordinated operations, the level of Manufacturers' Contract Demand with United Fuel would be 11,000 Mcf per day higher than that required under coordinated operations (cf. Exhibit I, pp. 1 and 5). ^{3/} Manufacturers would also have to construct 10.1 miles of 20-inch loop, on Line 1570 from Smithfield Station northward, in order to transport the additional volumes from United Fuel required under noncoordinated operations on the Design Day of the 1968-69 winter. Exhibit Z-8 shows that such pipeline would cost an estimated \$1,310,000. Exhibit Z-9 contains flow diagrams showing the operations on a noncoordinated basis of the Manufacturers and Home systems on the Design Day of the 1968-69 winter, assuming the installation of the aforementioned 10.1 miles of pipeline.

The immediate combined economics favoring coordinated operations over noncoordinated operations thus lie in two areas, viz., the avoidance of facility construction on the Manufacturers' system and a 11,000 Mcf per day reduction in the required Contract Demand level of Manufacturers with United Fuel. These economics are shown in Exhibit Z-6. Under noncoordinated operations, the incremental effect on Home and Manufacturers would be an annual loss of \$132,597; under coordinated operations their annual incremental revenues would exceed incremental costs by \$318,318; and the total economic spread between coordinated and noncoordinated operations would be \$450,915.

Exhibit Z-10 presents in schematic form the differences in the supplies of Home and Manufacturers, coordinated versus noncoordinated operations. The total gas requirements of the two systems would be the

^{3/} Exhibit Z-7 shows that the estimated load factor of Manufacturers' purchases from United Fuel on a noncoordinated basis during the 12 months ending October 31, 1968, would be 87 percent, compared to a 90 percent purchase load factor under coordinated operations.

same under either program; the changes arise in the sources of supply. It will be observed that there are only two instances of change between coordinated and noncoordinated operations, namely, in the utilization of underground storage and in Manufacturers' Contract Demand with United Fuel.

Exhibit Z-10 reflects the extent to which noncoordinated operations would result in the idling of Home's storage. Under noncoordinated operations, Home would purchase the additional Contract Demand from Manufacturers at 100 percent load factor and this would mean that the peak requirements and annual turnover of Home's storage fields would be substantially less than that possible under coordinated operations. Thus, under noncoordinated operations Exhibit Z-10 shows a volume out of Home's storage of 53,800 Mcf which is 16,300 Mcf below the Design Day withdrawal under coordinated operations of 70,100 Mcf.

* * *

NO MANUFACTURERS, AGENT AND REAY COMPANY
SUPPLIERS OF GASOLINE
AND OTHER PETROLEUM PRODUCTS
NO GAS AVAILABLE - MAY 1969 LISTED AS ADVERTISED
BY PURCHASER DETERMINED SALES TO HOME GAS COMPANY

EXHIBIT I
Page 1

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	
41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	
61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	
81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	
101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	
121	122	123	124	125</																

		Nov. 1969 Oct. 1970 Dec. 1971 Jan.			
1	GAS REQUIREMENTS:				
2	INDUSTRIAL				
3	COMMERCIAL				
4	RESIDENTIAL AND OTHER PUBLIC				
5	NET - TOTAL				
6	IMPORTS				
7	PURCHASED				
8	TOTAL REQUIREMENTS				
9	PURCHASED GAS REQUIREMENTS				
10	PURCHASED GAS REQUIREMENTS - COMMERCIAL				
11	PURCHASED GAS REQUIREMENTS - INDUSTRIAL				
12	PURCHASED GAS REQUIREMENTS - RESIDENTIAL				
13	PURCHASED GAS REQUIREMENTS - OTHER				
14	NET PURCHASED GAS REQUIREMENTS				
15	PURCHASED GAS REQUIREMENTS - COMMERCIAL				
16	PURCHASED GAS REQUIREMENTS - INDUSTRIAL				
17	PURCHASED GAS REQUIREMENTS - RESIDENTIAL				
18	PURCHASED GAS REQUIREMENTS - OTHER				
19	TOTAL PURCHASED GAS REQUIREMENTS				
20	PURCHASED GAS REQUIREMENTS - COMMERCIAL				
21	PURCHASED GAS REQUIREMENTS - INDUSTRIAL				
22	PURCHASED GAS REQUIREMENTS - RESIDENTIAL				
23	PURCHASED GAS REQUIREMENTS - OTHER				
24	TOTAL PURCHASED GAS REQUIREMENTS				
25	PURCHASED GAS REQUIREMENTS - COMMERCIAL				
26	PURCHASED GAS REQUIREMENTS - INDUSTRIAL				
27	PURCHASED GAS REQUIREMENTS - RESIDENTIAL				
28	PURCHASED GAS REQUIREMENTS - OTHER				
29	TOTAL PURCHASED GAS REQUIREMENTS				
30	COMPANY USE AND FUEL GAS				
31	UNACCOUNTED FOR GAS				
32	TOTAL GAS REQUIREMENTS EXCEPT FOR STANDBY				
33	STORAGE INPUT				
34	TOTAL GAS REQUIREMENTS				
35	GAS AVAILABLE				
36	PURCHASED GAS - COMPANY				
37	PURCHASED GAS - COMMERCIAL				
38	PURCHASED GAS - INDUSTRIAL				
39	PURCHASED GAS - RESIDENTIAL				
40	PURCHASED GAS - OTHER				
41	TOTAL PURCHASED GAS - COMPANY				
42	TOTAL PURCHASED GAS - COMMERCIAL				
43	TOTAL PURCHASED GAS - INDUSTRIAL				
44	TOTAL PURCHASED GAS - RESIDENTIAL				
45	TOTAL PURCHASED GAS - OTHER				
46	PURCHASED GAS - EASTERN PIPE LINE COMPANY				
47	PURCHASED GAS - TEXAS EASTERN TRANSMISSION COMPANY				
48	PURCHASED GAS - TEXAS TRANSMISSION CORPORATION				
49	TRANSCONTINENTAL GAS PIPE LINE COMPANY				
50	OTHER SOURCES				
51	OTHER PURCHASERS - NATURAL				
52	TOTAL GAS PURCHASED				
53	PURCHASED - REGULAR GASES				
54	PURCHASED - STREAMLINE				
55	PURCHASED - GASOLINE				
56	PURCHASED - LPG - ARA				
57	TOTAL GAS PURCHASED				
58	COURSES - NET				
59	TOTAL GAS AVAILABLE FOR USE				
60	BUSES OR REFCO'S				

EXHIBIT I
Page 5

ORANGE AND ROCKLAND UTILITIES, INC.

NYACK, NEW YORK

ADDRESS REPLY

TO

February 16, 1968

Mr. W. T. Haddad, Vice President
Home Gas Company
800 Union Trust Building
Pittsburgh, Pennsylvania

Dear Mr. Haddad:

In reply to your letter of December 26, 1967, we are enclosing herewith our estimates of gas requirements from the Home Gas Company for the years 1968 through 1972.

This abbreviated report is being made in accordance with decisions reached recently with you on your visit of January 24, 1968. All volumes of gas shown on your forms are on a pressure base of 14.73 psia..

You will note that we plan on an unchanged contract demand, but do anticipate contracting for certain quantities of gas under your WS rate schedule. These WS purchases are contingent, however, on a possible later transfer to CDS-EPR as detailed in your general terms and conditions, original sheet No. 67.

Very truly yours,



Dean B. Seifried
Vice President

DBS:eh
Enc.

ESTIMATE OF NATURAL GAS REQUIREMENTS

STATE OF MARYLAND'S REQUIREMENTS	1968-72 O&G OPERATING BUDGET
\$100,000	\$100,000

Customer Name Orange and Rockland Utilities, Inc.
Year 1993

351

CENTRAL HUDSON GAS & ELECTRIC CORPORATION
POUGHKEEPSIE, N.Y. 12602

February 2, 1968

Mr. W. T. Haddad, Vice President
Home Gas Company
P. O. Box 1196
Pittsburgh, Pennsylvania 15230

Dear Mr. Haddad:

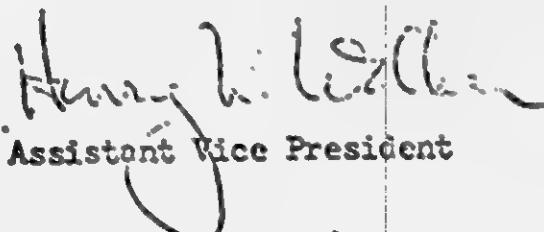
Enclosed are two copies of our gas requirements for the period January, 1968 through December 1972 and for the peak days of February, 1969 through 1973.

This information is based upon our latest approved forecast. However, we are in the process of preparing a new forecast for future years, which may revise our estimate of customers and sales. However, at your current rate levels, our maximum daily requirement and monthly quantities taken from Home Gas Company will not be affected by any changes in our forecast.

At such time as your commodity rate is reduced to 32¢ or less, we anticipate increasing our take to 100% load factor within our existing contract demand.

Should you have any questions regarding this date, please do not hesitate to contact us.

Yours very truly,


Harry L. Walker
Assistant Vice President

HLWalker/kam

359 ORANGE AND ROCKLAND UTILITIES, INC.
NYACK, NEW YORK

ADDRESS REPLY

TO

April 9, 1968

Mr. W. T. Haddad, Vice Pres.
Home Gas Company
800 Union Trust Building
P.O. Box 1196
Pittsburgh, Pa. 15230

Dear Mr. Haddad:

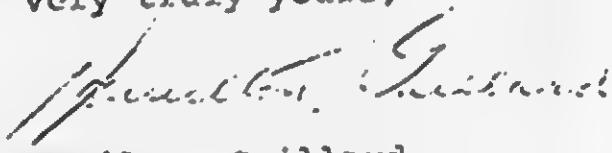
In accordance with your request, we are enclosing estimates of purchases which we would make under the condition that your CDS-EPR commodity rate were reduced to 31 cents. One of the enclosed tabulations shows purchases by stations on peak day, threshold day, and typical summer day. The second tabulation shows estimated purchases of CDS-EPR gas, also injection and withdrawal of WS gas, by months.

These estimates assume that the CDS-EPR and WS contract quantities will remain as shown on our earlier estimates submitted to you in February 1968, in order to reflect only the effect on commodity purchases resulting from a reduction in your commodity rate.

The station which is referred to as "Route 45, Spring Valley" is that station which would have to be constructed in order to transfer gas from the Home line into our 16" trunk line. Your delivery pressure at this station would have to be no less than 300 psig as our line operates at a maximum pressure of 249 psig.

We believe these tabulations will satisfy your request, but please contact us if you have further questions.

Very truly yours,



Hamilton Gaillard
Chief Gas Engineer

HG:ar
Encls.

cc: Mr. D. B. Scirfied

**Estimated Volume of Gas Which Would be Purchased From Home Gas Company
At a CDS-EPR Commodity Rate of \$0.3100 Or Less**
XCF @14.73 PSEA

	<u>Jan.</u>	<u>Feb.</u>	<u>Mar.</u>	<u>Apr.</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>
<u>1962</u>												
CDS-EPR	377,300	792,400	877,300	820,700	707,500	566,000	537,700	817,300	869,000	877,300	849,000	877,300
"S	20,000	20,000	6,000	-	(21,000)	(36,000)	(36,000)	(21,000)	-	-	9,000	45,000
Delivery	957,300	820,400	883,300	820,700	686,500	530,000	501,700	841,300	828,000	877,300	853,000	922,300
<u>1970</u>												
CDS-EPR	877,300	792,400	877,300	849,000	877,300	849,000	877,300	849,000	877,300	849,000	877,300	877,300
"S	45,000	42,000	9,000	-	(31,500)	(54,000)	(54,000)	(31,500)	-	-	13,500	67,500
Delivery	922,300	824,400	886,200	849,000	845,800	795,000	823,300	817,500	877,300	862,500	944,800	10,281,500
<u>1972</u>												
CDS-EPR	877,300	792,400	877,300	849,000	877,300	820,700	849,000	849,000	877,300	849,000	877,300	877,300
"S	67,500	63,000	13,500	-	(42,000)	(72,000)	(72,000)	(42,000)	-	-	13,000	90,000
Delivery	944,800	855,600	890,800	849,000	835,300	748,700	777,000	807,000	877,300	867,000	967,300	10,184,300
<u>1973</u>												
CDS-EPR	877,300	792,400	877,300	849,000	792,400	735,800	735,800	735,800	735,800	849,000	849,000	877,300
"S	90,000	86,000	18,000	-	(52,500)	(90,000)	(90,000)	(52,500)	-	-	22,500	112,500
Delivery	967,300	876,400	895,300	849,000	739,900	645,800	645,800	603,300	849,000	877,300	909,600	9,658,900

COMPARISON OF MAY 1968 ESTIMATE AND REVISED MAY 1968 ESTIMATE
FOR ORANGE AND ROCKLAND AND CENTRAL HUDSON

	<u>May 1968 Estimate</u>		<u>May 1968 Estimate</u>	
	<u>Nov. 1968 to Oct. 1969 Inclusive</u>		<u>Peak Day Feb. 1, 1969</u>	
	<u>Original</u> <u>McF.</u>	<u>Revised</u> <u>McF.</u>	<u>Original</u> <u>McF.</u>	<u>Revised</u> <u>McF.</u>
Orange & Rockland Utilities, Inc.	5,234,500	9,458,800	4,224,300	30,300
Central Hudson Gas & Electric Corp.	1,635,200	4,015,000	2,379,800	11,000
Combined Total	6,869,700	13,473,800	6,604,100	41,300

THE MANUFACTURERS LIGHT AND HEAT COMPANY AND HOME GAS COMPANY

COST DATA REFLECTING IMPACT OF MANUFACTURERS AND HOME
OF SERVING THE ADDITIONAL REQUIREMENTS OF ORANGE AND ROCKLAND AND
CENTRAL HUSON ON A NONCOORDINATED VERSUS COORDINATED OPERATIONS BASIS

Based on Twelve Months Ending October 31, 1962

Line No.	Rate Per Mcf (1)	Noncoordinated Operations		Coordinated Operations		Noncoordinated versus Coordinated Operations (B-7-2)	
		Reference (2)	Mcf (3)	Reference (5)	Mcf (6)		
1 REVENUE FROM HOUSE TO SERVE THE ADDITIONAL REQUIREMENTS OF ORANGE AND CENTRAL HUSON	314	Exhibit Z-5	6,604,100	2,067,271	Exhibit Z-5	6,604,100	2,067,271
2 COST OF PURCHASED FROM UNITED FUEL GAS COMPANY TO SERVE THE ADDITIONAL REQUIREMENTS OF ORANGE AND CENTRAL HUSON	26.184	Exhibit Z-5	6,604,100	1,728,953	Exhibit Z-5	6,604,100	1,728,953
3 General Charge	\$2.294	Exhibit Z-5	6,604,100	302,868	Exhibit Z-5	6,604,100	(302,868)
4 Commodity Charge	143.107						
5 COST ASSOCIATE WITH PLANT INVESTMENT REQUIRED TO TRANSPORT ADDITIONAL FUEL GAS REQUIREMENTS FROM UNITED FUEL		Sheet 2, herein					
6 COST OF PLANT INVESTMENT REQUIREMENTS OF ORANGE AND ROCKLAND AND CENTRAL HUSON	2,119,868						
7 Less:	(132,521)						
8 Total Contract Demand from United Fuel:							
9 Coordinated Operations	442,000	Exhibit 1, Page 1, Line 42					
10 Uncoordinated Operations	531,000	Exhibit 1, Page 5, Line 42					
11 Increase of \$1 per Billioncf Uncoordinated Operations	11,000						

THE MANUFACTURERS LIGHT AND POWER COMPANY
COST ASSOCIATED WITH PLANT INVESTMENT REQUIRED ON A NONCOORDINATED BASIS
Based on Twelve Months Ending October 31, 1969.

<u>Line No.</u>	<u>Amount</u> <u>(\$)</u>
<u>COST OF FACILITIES</u>	
1	1,310,000
2	10.1 Miles Loop of Line No. 1570
3	Less: Accumulated Depreciation @ 10/31/69
	<u>16,375</u>
	<u>1,293,625</u>
4	Net Plant
<u>COST ASSOCIATED WITH PLANT INVESTMENT</u>	
5	1,515
6	Plant Operation and Maintenance Expense
7	Depreciation Expense (2.5% x Line 2)
8	Return @ 6.5% <u>1/</u>
9	Federal Income Tax (48% less 5% Cons. Tax Svgs.) <u>2/</u>
10	Pa. Corporate Net Income Tax @ 7% <u>2/</u>
11	TOTAL COST ASSOCIATED WITH PLANT INVESTMENT <u>148,107</u>

1/ This rate of return is used for illustrative purposes only and does not necessarily represent the rate of return to be claimed by the Company in a rate proceeding.

2/ See Sheet 3, herein for computation of income taxes.

HOME STORAGE
COORDINATED - 70,100 MCF
NONCOORDINATED - 53,800 MCF

N.Y.
PA.
OLEAN

<u>SUMMARY OF SUPPLIES</u>	
<u>COORDINATED</u>	<u>NONCOORDINATED</u>
431,000 MCF	442,000 MCF
529,300 MCF	325,200 MCF
70,100 MCF	51,300 MCF
494,000 MCF	ALL OTHER SUPPLIES 345,000 MCF
1475,700 MCF	TOTAL 1475,700 MCF

M.L&H.
DELIVERIES
TO HOME
COORDINATED - 78,200 MCF
NONCOORDINATED - 94,500 MCF

OHIO

ALL OTHER SOURCES
OF GAS SUPPLY
COORDINATED - 454,000 MCF
NONCOORDINATED - 454,000 MCF

M.L&H. STORAGE
COORDINATED - 520,000 MCF
NONCOORDINATED - 525,900 MCF

W. VA.

PA.
MD.

UNITED FUEL SUPPLY
COORDINATED - 431,000 MCF
NONCOORDINATED - 442,000 MCF

THE MANUFACTURERS LIGHT &
HEAT CO.
HOME GAS CO.
SCHEMATIC SKETCH OF SUPPLIES
DESIGN DAY - WINTER
1968-69

[Caption Omitted in Printing]

386

NOTICE OF APPLICATION

(July 3, 1968)

Take notice that on June 30, 1968, The Manufacturers Light and Heat Company (Manufacturers) and Home Gas Company (Home), 800 Union Trust Building, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP68-364 a joint application pursuant to Section 7(c) of the Natural Gas Act requesting a certificate of public convenience and necessity authorizing the coordination of their operations commencing November 1, 1968, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicants seek authorization to coordinate their operations in order to provide greater operating flexibility to make available the underground storage fields of Manufacturers and Home on a combined basis, and to permit Manufacturers to optimize purchases under its gas supply contracts to the best advantage of both companies.

Applicants state that under the proposed coordinated operations, the present service agreement between Manufacturers and Home would be cancelled. Manufacturers would discontinue the separate billing of interstate gas to Home and the market requirements of the customers of Manufacturers and Home would be furnished in a manner which Applicants say would utilize most effectively the interstate pipeline and storage facilities of Manufacturers and Home. Jurisdictional sales hereafter by Manufacturers and Home would be made under a joint FPC gas tariff. Applicants state that the proposed joint tariff would supersede and cancel the FPC gas tariffs of Manufacturers and Home currently in effect.

387

Applicants state that authorization of the proposed coordinated operations would benefit their systems combined to the extent of \$318,318 annually, based upon operations during the twelve months ending October 31, 1969. In contrast, Applicants state that the continuation of their operations on the present noncoordinated basis would result in a net loss to their systems combined of \$132,597 annually, based upon projected operations during the same period.

Further, Applicants state that under the proposed joint tariff, the services rendered by them to their respective customers, and the rates charged therefor, would not be changed. Applicants also state that the joint tariff contains one provision not heretofore included in their present tariffs, namely, a minimum commodity obligation requiring customers to purchase at 6-percent load factor commencing November 1, 1968, 62 $\frac{1}{2}$ percent load factor commencing November 1, 1969, and at 65 percent load factor commencing November 1, 1970 and thereafter.

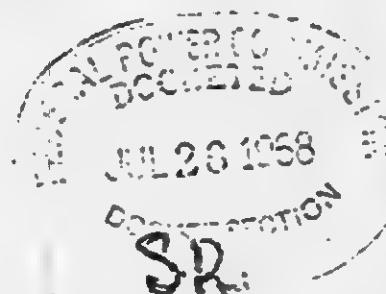
Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (157.10) on or before July 29, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

[Caption Omitted in Printing]

PETITION TO INTERVENE OF
PENNSYLVANIA GAS AND WATER COMPANY



94
Pennsylvania Gas and Water Company (Penn Gas), pursuant to Section 15(a) of the Natural Gas Act, as amended, and Section 1.8 of the Rules of Practice and Procedure of the Federal Power Commission, petitions the Commission to enter an order permitting the intervention of petitioner in the above-entitled proceeding for the purpose hereinafter specified.

In support of this petition, Penn Gas respectfully shows the following:

I

The exact legal name of petitioner is Pennsylvania Gas and Water Company, and its principal office and place of business are located at 30 North Franklin Street, Wilkes-Barre, Pennsylvania.

Penn Gas is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania.

II

The names, titles, and post office addresses of the persons to whom correspondence or communications are to be addressed in connection with this petition are:

Arthur J. Podesta
Vice President and Treasurer
Pennsylvania Gas and Water Company
30 North Franklin Street
Wilkes-Barre, Pennsylvania 18701

Charles E. Thomas, Esq.
Metzger, Hafer, Keefer, Thomas and Wood
208 Walnut Street
Harrisburg, Pennsylvania 17108

Reuben Goldberg, Esq.
Allan Freidson, Esq.
1250 Connecticut Avenue
Washington, D. C. 20036

III

Penn Gas is a public utility corporation operating entirely within the Commonwealth of Pennsylvania. Its operations are subject to the jurisdiction of the Pennsylvania Public Utility Commission.

Penn Gas is engaged in the business of supplying and distributing water and natural gas to certain sections of Pennsylvania. Water service is supplied in parts of the Counties of Susquehanna, Wayne, Lackawanna, and Luzerne. Natural gas is furnished to the public in parts of the Counties of Lackawanna, Wyoming, Luzerne, Columbia, Northumberland, Snyder, Montour, Union and Lycoming.

IV

To the extent pertinent to this petition, Penn Gas distributes natural gas in Columbia, Northumberland, Snyder, Montour, Union and Lycoming Counties, and in part of Luzerne County, which service area is known as petitioner's Williamsport, Sunbury, Bloomsburg-Danville, and Berwick Divisions.

Penn Gas presently purchases natural gas requirements for these Divisions from The Manufacturers Light and Heat Company (Manufacturers) and Transcontinental Gas Pipe Line Corporation.

V

On June 30, 1968, Manufacturers and Home Gas Company filed a joint application in the above-entitled proceeding under Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing them, commencing November 1, 1968, to coordinate their operations. Under the proposed coordinated operations, the present individual tariffs of Manufacturers and Home Gas Company for the sale of natural gas to their customers would be cancelled, and sales of natural gas to the customers of Manufacturers and Home Gas Company would be made under a proposed joint tariff.

Additionally, under the proposals submitted in the application, Manufacturers' customers would have imposed upon them a new minimum commodity obligation requiring them to purchase gas at a 60% load factor commencing November 1, 1968, at 62-1/2% load factor commencing November 1, 1969, and at a 65% load factor commencing November 1, 1970, and thereafter.

VI

397
The proposals of the joint certificate application are far-reaching, complex and raise important issues, some of which are noted in Paragraph VII hereof, that are not met by the applicants. The issues require full exploration in a hearing which Penn Gas hereby requests. On the basis of the application as filed, Penn Gas' cost of gas purchased from Manufacturers will be substantially increased to the detriment of Penn

Gas and its customers. Penn Gas, therefore, seeks intervention in opposition to the application.

VII

Among the issues involved in the application are the following:

1. The validity of the unilateral abrogation of contracts for the purchase and sale of natural gas between the applicants and their respective customers, including Penn Gas. (See United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332; FPC v. Sierra Pacific Power Co., 350 U.S. 348.)

2. The validity and propriety of the proposed minimum take-or-pay provisions in light of the decision of the Commission and court respecting partial requirements rates and suppression of competition.

(Lynchburg Gas Co. v. FPC, 336 F.2d 942, reversing Atlantic Seaboard Corp., 28 FPC 860; Atlantic Seaboard Corp., Opinion No. 523, 38 FPC

398

91.) Observe in this connection the absence of any affirmative and positive showing in the application regarding the need for a minimum load factor provision on Manufacturers' system. (See Joint Certificate Application, p. 7.)

3. The validity of the proposal respecting coordinated operations under the rate standards of the Natural Gas Act in light of the Commission's decision in United Fuel Gas Co., 19 FPC 300, holding that United Fuel Gas Company's substitution of commodity gas sales to Ohio Fuel Gas Company and Manufacturers contravened the contract demand requirements of the tariff and subjected other customers to unlawful discrimination.

4. The ability of United Fuel Gas Company to deliver the additional 6,604,100 Mcf to Manufacturers for re-delivery to Home, alleged to be required by Home, and the economic consequences upon United Fuel Gas Company of such deliveries. The application is totally deficient in respect to these matters.

5. The continued propriety of the existing rate levels, rates, zone boundaries, and rate differentials under coordinated operations. The public interest and public convenience and necessity cannot be determined unless these matters are considered and determined. The application, however, presents nothing as to them and simply assumes the continued propriety thereof.

VIII

399

The application is deficient in many respects. It is devoid of proof that Manufacturers' customers, including Penn Gas, will be benefited by coordinated operations, and contrary to Commission requirements (Regulations under Natural Gas Act, Section 157.14(a)(11) and (16)) and precedents, the consequences of the proposals are ignored beyond the 1968-1969 heating season. Moreover, the flow diagrams submitted with the application do not show the maximum day delivery of gas from Manufacturers to Home under the proposed coordinated operations. The application is also devoid of proof of the impact of the proposals on the customers of each applicant separately and as to each customer.

IX

Penn Gas is an interested party within the meaning of Section 15(a) of the Natural Gas Act. As a customer of Manufacturers, its interests may

be adversely affected by the Commission's final order herein. Penn Gas' interest is not adequately represented by any other party. Its intervention and participation in this proceeding is, therefore, necessary and appropriate.

WHEREFORE, Penn Gas prays that an order be entered granting full rights of intervention and participation in the above-entitled docket as a party thereto.

[Subscription Omitted in Printing]

[Caption Omitted in Printing]

434

APPLICATION OF THE MANUFACTURERS
LIGHT AND HEAT COMPANY AND HOME GAS
COMPANY FOR TEMPORARY CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY

The Manufacturers Light and Heat Company (Manufacturers) and Home Gas Company (Home), in accordance with Section 7(c) of the Natural Gas Act and Section 2.57 of the Commission's Rules of Practice and Procedure, urgently request the Commission to grant them a temporary certificate of public convenience and necessity to coordinate their operations commencing November 1, 1968. In support of their request, Manufacturers and Home respectfully represent the following:

I

Authority to Construct
Facilities is not Requested

The joint application in this proceeding shows that, should the Commission authorize Manufacturers and Home to coordinate operations, no additional facilities will be required to serve their combined market requirements during the 1968-69

435 winter season. This application for temporary authority, therefore, does not involve facility construction. Manufacturers and Home merely request authority to integrate operations so as to better enable them to serve their customers efficiently and economically.

Under coordinated operations, Manufacturers would discontinue the separate billing of interstate gas to Home and the combined market requirements of the customers of Manufacturers and Home would be furnished in a manner which would utilize most effectively the interstate pipeline and storage facilities of Manufacturers and Home to the maximum advantage of both companies and their customers. Jurisdictional sales hereafter by Manufacturers and Home would be made under a joint FPC gas tariff, which would supersede and cancel the individual tariffs of Manufacturers and Home currently in effect. The proposal thus contemplates that Manufacturers and Home would operate as an integrated unit for all FPC regulatory and rate-making purposes, and all actions taken pursuant to coordinated operations would only be such actions as are subject to the exclusive jurisdiction of this Commission.

II

Authorization of Coordinated Operations is
Required in the Public Interest

The joint application of Manufacturers and Home in this proceeding discloses these salient facts:

436 1. Since 1958 Orange and Rockland Utilities, Inc. (Rockland), and Central Hudson Gas and Electric Corporation (Central Hudson), the major nonaffiliated wholesale customers of Home, have purchased gas from Home at approxi-

mately 40 per cent load factor. These customers have recently advised Home, however, of an intent to increase their purchases to near 100 per cent load factor. For the 12 months ending October 31, 1969, Rockland and Central Hudson plan to purchase an additional volume totaling 6,604,100 Mcf.

2. Rockland and Central Hudson propose no increase in their respective Contract Demands with Home. They plan only to maximize purchases under their present contracts, and this they have a right to do. Home presently purchases at 100 per cent load factor from Manufacturers, with the result that the sale of the additional 6,604,100 Mcf to Rockland and Central Hudson on the present, noncoordinated individual company basis would require Home to substantially increase its Contract Demand with its sole supplier, Manufacturers. Such increased CD purchases from Manufacturers at 100 per cent load factor (the most favorable basis) would cost Home an average of 39.86¢ per Mcf compared to commodity revenues to be received from Rockland and Central Hudson of 30.98¢ per Mcf. It is clear, therefore, that in the event Manufacturers and Home continue to operate on a noncoordinated basis, the immediate impact on Home would be a substantial loss, namely, 8.88¢ per Mcf (the difference between Manufacturers' 39.86¢ 100 per cent load factor rate and Home's 30.98¢ commodity rate) times the increased volumes involved, or a net revenue loss substantially in excess of 1/2 million dollars annually. Home would receive only commodity revenues while incurring both demand and commodity costs from Manufacturers.

3. As noted earlier, the existing facilities of Manufacturers and Home are adequate to supply the 1968-69

winter season requirements of their customers should this Commission authorize the companies to coordinate their operations--
additional facilities would not be required and authorization
therefor is not requested in this application. In contrast,
should Manufacturers and Home be required to continue to operate on the present noncoordinated basis, Home's Contract Demand with Manufacturers would have to be increased to 94,500 Mcf per day; the additional peak responsibility thereby placed on Manufacturers would, in turn, require the level of Manufacturers' Contract Demand with United Fuel Gas Company to be 11,000 Mcf per day higher than that needed under coordinated operations; and this, finally, would require Manufacturers to construct a 10.1 mile pipeline loop on its transmission system, estimated to cost \$1,310,000.

4. The combined economics favoring coordinated over noncoordinated operations, based upon the 12 months ending October 31, 1969, are as follows: under noncoordinated operations, the incremental effect on Home and Manufacturers combined would be an annual loss of \$132,597; under coordinated operations their annual incremental revenues would exceed incremental costs by \$318,318; and the total economic spread between coordinated and noncoordinated operations is \$450,915.

438 5. Coordinated operations will provide continuing advantages, both short and long range. Manufacturers and Home will achieve greater operating flexibility, Home's underground storage operations will be integrated with those of Manufacturers so as to obtain maximum facility utilization for both companies, and Manufacturers will be able to optimize its gas purchases and at the same time avoid facility construction.

III

A Viable Alternative to
Coordinated Operations Does Not Exist

Manufacturers and Home face a serious emergency. As noted hereinabove, Manufacturers could not supply the level of requirements needed by Home if they continue to operate as separate, noncoordinated companies without the construction of a 10.1 mile loop on its system. It is obvious that it would be impossible for Manufacturers to apply for, receive authorization and accomplish this construction in time to enable Manufacturers to supply Home the required level of service under noncoordinated operations commencing November 1, 1968. Thus, there is no viable alternative to coordinated operations:

439 denial of this application for a temporary certificate would require Manufacturers and Home to operate under emergency conditions, with inadequate facilities and gas supply, during the entire 12 months ending October 31, 1969. On the other hand, under coordinated operations the necessary gas supply and facilities already exist; all the two companies need is authorization from this Commission allowing them to so integrate their operations.

IV

Authorization of Coordinated Operations
Will Not Operate to the Prejudice of Any Party

Since Manufacturers and Home do not request authorization to construct facilities, but only seek permission to integrate their operations on a coordinated basis, a grant of the instant request for temporary authority cannot operate to the future prejudice of any party. In their joint application

herein, Manufacturers and Home have stated that their proposal to coordinate operations is not intended to prejudice the position of any party in any pending or future rate case or in any realignment proceeding which may be filed hereafter. In order to assure that adequate data will be readily available, Manufacturers and Home have proposed to maintain separately on their books the revenue received, property accounts and operating expenses. The books of the companies will also reflect all deliveries of gas between Manufacturers and Home, together with such other records as may be required for appropriate analysis of the individual operations of Home and Manufacturers within the coordinated operations proposed in this proceeding. We can see no way, therefore, that coordinated operations could possibly operate to the disadvantage of any party.

V

Manufacturers and Home Agree to a
Suspension of the Minimum Commodity
Obligation Pending Commission Decision
on Permanent Certification

The joint FPC gas tariff under which Manufacturers and Home would render service pursuant to coordinated operations, as set forth in Exhibit P to their application in this proceeding, contains a minimum commodity obligation requiring customers to purchase at 60 per cent load factor commencing November 1, 1968; at 62-1/2 per cent load factor commencing November 1, 1969; and at 65 per cent load factor commencing November 1, 1970 and thereafter.* In view of the stated op-

* In all other respects, the rate levels, terms, and provisions of the joint tariff are the same as those contained in the tariffs of Manufacturers and Home heretofore filed in Docket Nos. RP66-5 and RP66-6, respectively. The Zone

[continued]

position of certain customers, and in order to avoid confronting the Commission with a controversy over the minimum bill provision at this early stage of the proceeding,

441 Manufacturers and Home agree that operation of the proposed minimum commodity bill should be suspended by the Commission pending its decision on permanent certification.

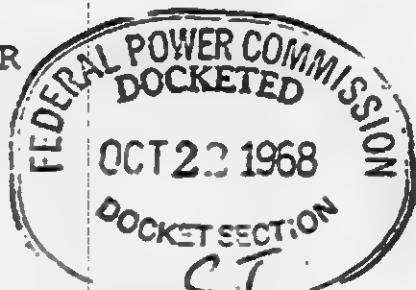
WHEREFORE, Manufacturers and Home urgently request the Commission to issue a temporary certificate of public convenience and necessity authorizing them to coordinate their operations, as described hereinabove and as further described in their joint application in this proceeding.

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1 rates contained in the joint tariff applicable to Manufacturers' customers and the Zone 2 rates applicable to Home's customers were developed in Docket Nos. RP66-5 and RP66-6 based upon costs of service and allocation procedures applied individually to Manufacturers and Home.

[Caption Omitted in Printing]

ANSWER OF PENNSYLVANIA GAS AND WATER
COMPANY IN OPPOSITION TO APPLICATION
FOR TEMPORARY CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY



Pennsylvania Gas and Water Company (Penn Gas) files this Answer in Opposition to the joint application of The Manufacturers Light and Heat Company (Manufacturers) and Home Gas Company (Home), herein referred to collectively as "Applicants", for the issuance of a temporary certificate under the second proviso of Section 7(c) of the Natural Gas Act (Act), as amended, authorizing Applicants to coordinate their operations commencing November 1, 1968.

The grounds for Penn Gas' opposition are the following:

1. There is no emergency within the meaning and scope of the second proviso of Section 7(c) of the Act, a prerequisite to favorable exercise of the Commission's authority thereunder because the facts disclose that there is no gas and no facilities shortage.
2. The issuance of a temporary certificate authorizing coordinated operations involves supersession of existing terms and conditions of service and existing contractual rights and obligations of service agreements, and the establishment of new zones and zone rates, terms and conditions of service, and purported new contractual relationships for the purchase and sale of natural gas between Applicants and the customers of Manufacturers and Home which may be lawfully effectuated, if at all, only after notice and opportunity for hearing, including compliance with the requirements of Sections 4 and 5 of the Act. These requirements may not be circumvented either by Appli-

cants or by the Commission through the exercise of authority under the second proviso of Section 7(c) of the Act. Under these circumstances the temporary certificate may not be legally issued.

3. The issuance of a temporary certificate authorizing coordinated operations creates an automatic increase in Sellers' cost of sales to customers now served only by Manufacturers and a reduction in cost of sales to customers now served only by Home. Such changes in cost of gas should be effectuated, if at all, only after hearing. It may not be lawfully effectuated either by Applicants or by the Commission through the device of an application for temporary certificate under Section 7(c) of the Act.

4. The issuance of the temporary certificate authorizing coordinated operations will be immediately prejudicial to the interests of Penn Gas and its customers.

In support of this Answer in Opposition and the grounds for opposition, Penn Gas shows:

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THE FACTS OF THIS CASE DO NOT AUTHORIZE
THE ISSUANCE OF A TEMPORARY CERTIFICATE
UNDER THE SECOND PROVISO OF SECTION 7(c)
OF THE NATURAL GAS ACT

The second proviso of Section 7(c) of the Natural Gas Act confers an extraordinary power on the Commission. The Commission is authorized to act without notice or hearing, but the use of this extraordinary power is carefully circumscribed. The Commission may use it only when an emergency exists on a natural gas pipeline company's system which precludes maintenance of adequate service to an existing market area or existing customer.

As Penn Gas now shows, the facts in this case establish there is no emergency of any kind and certainly none involving Manufacturers' ability to meet its obligations to Home and Home's obligations to its customers. The facts also establish that the Commission may not legally authorize coordinated operations by means of a temporary certificate because the changes in terms and conditions of service and purported changes in contractual relationships involved in the proposed coordinated operations may be effected, if at all, only in compliance with the requirements of Sections 4 and 5 of the Act.

1. The alleged emergency.

Applicants allege (Application for Temporary Certificate, p. 3) that two of Home's customers, Orange and Rockland Utilities, Inc. (Rockland) and Central Hudson Gas and Electric Corporation (Central Hudson) "recently advised Home... of an intent to increase their purchases to near 100 per cent load factor" under their present contracts, which means that these customers in the 12 months ending October 31, 1969, will purchase an additional volume of 6,604,100 Mcf. (underscoring supplied)

Applicants also allege that without the coordinated operations proposed in their application for permanent certificate, Home will have to increase its Contract Demand with Manufacturers and that Manufacturers, in turn, will have to (a) increase its Contract Demand with United Fuel Gas Company, and (b) construct a 10.1 mile pipeline loop on its transmission system at an estimated cost of \$1,310,000 (Application for Temporary Certificate, p. 4).

A "serious emergency" results, Applicants allege (Application for Temporary Certificate, p. 5), because "it would be impossible for Manufacturers to apply for, receive authorization and accomplish this construction in time to enable Manufacturers to supply Home the required level of service under noncoordinated operations commencing November 1, 1968."

2. The alleged facts do not establish an emergency of any kind within the meaning of the second proviso of Section 7(c).

Assuming, arguendo, the truth of Applicants' allegations, they do not establish an emergency of any kind under the second proviso of Section 7(c).

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An "emergency" is a situation arising out of an "unforeseen combination of circumstances". Webster's Unabridged Dictionary (Third New International Edition). The situation alleged by Applicants is not of recent origin; it was known to Applicants as long ago as February, 1968. It is not the result of an "unforeseen combination of circumstances"; it is of Applicants' deliberate making.

Not "recently", as Applicants allege in their Application for Temporary Certificate, but as long ago as February 2, 1968 Applicants were on notice that Central Hudson would take its gas entitlements under its existing service agreement with Home at 100% load factor. In a letter of that date, included by Applicants in their permanent certificate application as Exhibit Z-2, Central Hudson advised

Home:

"At such time as your commodity rate is reduced to 32¢ or less, we anticipate increasing our take to 100% load factor within our existing contract demand."

With respect to Rockland, Home was on notice by April 9, 1968, if not earlier, of Rockland's intention to go to 100% load factor under the same conditions, as is disclosed by Exhibit Z-3 to Applicants' permanent certificate application.

Although on notice of the intentions of Rockland and Central Hudson to take gas at 100% load factor, which would require Home to deliver an additional 6,604,100 Mcf to them, if Home established its commodity rate at 32¢ or less per Mcf, Home nevertheless proposed to settle its pending rate proceedings in Docket No. RP66-6 by establishing a commodity rate of 31.7¢ per Mcf effective November 1, 1966, 31.00¢ per Mcf effective November 1, 1967, and 30.98¢ per Mcf effective June 1, 1968.¹ These proposals were agreed to by Home's customers in settlement negotiations, to which Penn Gas was not a party, held in March and April, 1968. At the same time, settlement negotiations were also being held in Manufacturers' rate docket, No. RP66-5.

In the March and April, 1968 rate settlement conferences in Manufacturers' rate docket No. RP66-5, Manufacturers also undertook to secure the agreement of its customers to coordinated operations on the ground that this was made necessary by Rockland's and

¹ These commodity rates reflect reductions from a commodity charge of 38.48¢ per Mcf (see App. B to FPC order in Home Gas Co., RP66-6, issued Oct. 8, 1968) and were made by Home in full knowledge of the hardships it now proclaims in its temporary application (p. 3), namely, that it incurs a cost of 39.86¢ per Mcf for which it will only receive 30.98¢ per Mcf from Rockland and Central Hudson for the sales it proposes to make to them.

Central Hudson's intention to take their gas entitlements at 100% load factor from Home. Failing to secure such agreement, the coordinated operations proposal was withdrawn as part of the rate settlement, and Applicants advised the conferees that a certificate application therefor would be filed at a later date.

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On June 30, 1968, Applicants filed their application for a permanent certificate authorizing the coordination of their operations commencing November 1, 1968. To support the application, Applicants made the precise allegations that they now make in their application for temporary certificate to claim the existence of an emergency and as justification for the temporary. The allegations of the temporary certificate regarding Rockland's and Central Hudson's intentions to take at 100% load factor, the alleged need for Home to increase its Contract Demand from Manufacturers, and the alleged need for Manufacturers to build a 10.1 mile loop to supply the additional Contract Demand are set forth in almost identical words in the application for permanent certificate. (Compare the allegations of the application for permanent certificate in the second full paragraph on page 4, the last paragraph on page 5, the last paragraph on page 6, the last paragraph on page 7, and the first paragraph on page 8 with the allegations on pages 3 to 6 of the application for temporary certificate.)

Penn Gas on July 26, 1968 filed a timely petition to intervene in opposition to the application for permanent certificate, and requested a hearing. Penn Gas specified in its petition to intervene some of the adverse public interest effects of the proposed coordin-

ated operations and some of the serious deficiencies of the application. The petition to intervene was not Applicants' first notice of Penn Gas' opposition to the coordinated operations. Penn Gas' opposition thereto and its intention to oppose the certificate application were made known during the rate settlement negotiations.

451 With the filing of Penn Gas' timely petition to intervene, which explicitly set forth its opposition to the application, Applicants knew then, if they could be said not to have known sooner, that a hearing was required and that it would be some time before a final decision could be issued. Yet, Applicants did nothing. They waited until October 9, 1968 to file an application for temporary certificate (received by Penn Gas' counsel on October 14, 1968), alleging the existence of a "serious emergency" because facilities alleged to be needed by November 1, 1968, could not be constructed by that date.

The facts described above and their chronology lead only to the conclusion that no unforeseen circumstances or unforeseen combination of circumstances produced an alleged crisis; that Applicants were on notice of Rockland's and Central Hudson's intentions in sufficient time to apply for authority to construct and to complete such facilities as would be necessary in the absence of coordinated operations, assuming erroneously that they are necessary to enable Manufacturers to supply Home and Home to supply Rockland and Central Hudson with an additional annual volume of 6,604,100 Mcf; that Applicants deliberately decided to follow another course, i. e., to apply for coordinated operations; that they did not follow that route with diligence; and that

Applicants deliberately withheld their application for temporary in the hope of forcing the Commission into the issuance of an illegal temporary certificate without any public interest showing by Applicants and
452 without any showing of United Fuel's ability to supply the additional volumes to Manufacturers without construction by Columbia Gulf of pipeline capacity to the producing areas in Southern Louisiana. (See Penn Gas Petition to Intervene, p. 5, par. 4.)

3. There is no emergency threatening maintenance of adequate service by Manufacturers to Home and by Home to Rockland and Central Hudson.

Assuming, arguendo, that the absence of an unforeseen combination of circumstances is irrelevant to the exercise of the Commission's authority under the second proviso of Section 7(c), a temporary certificate for coordinated operations would nevertheless be illegal because the 6,604,100 Mcf is available to Home without coordinated operations, without the purchase of additional Contract Demand by Home, and without the construction of 10.1 miles of loop line by Manufacturers. Moreover, there is no necessity for coordinated operations by November 1, 1968.

The Commission should take note of these facts: Manufacturers and Home have not alleged that Manufacturers does not have the additional 6,604,100 Mcf for Home, and they have not alleged that Manufacturers must construct additional facilities to make this 6,604,100 Mcf available to Home. What Applicants have alleged is that additional Contract Demand cannot be made available by Manufacturers to Home without construction of 10.1 miles of loop. But there is no need for

additional Contract Demand and facilities to provide Home with the additional annual volume of 6,604,100 Mcf.

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In the application for permanent certificate, Applicants concede that "Manufacturers has an ample valley in its purchases from United Fuel to handle the 6,604,100 Mcf increase in the annual requirements of Rockland and Central Hudson" (Application for Permanent Certificate, p. 7). To be sure, Manufacturers asserted this volume was available under "coordinated operations", but the fact is that this volume is available - it cannot be otherwise - under existing operations, modified to accommodate the increase in off-peak annual volumes required by Home under 100% load factor sales to Rockland and Central Hudson; establishment of a rate schedule providing for off-peak annual volumes at a price less than the average 100% load factor price for Contract Demand gas (see, for example, the ACQ Rate Schedules of Transcontinental Gas Pipeline Corporation and Texas Eastern Transmission Corporation, and the SO Rate Schedule of Tennessee Gas Pipeline Co.).

There are additional alternatives. Manufacturers presently obtains substantial annual volumes of gas from Transco at Tamarack, near Leidy Storage Field in North-Central Pennsylvania, some of which is part of Penn Gas' purchase entitlement from Manufacturers. The availability and receipt of such volumes is not indicated on Manufacturers' peak day flow diagrams in its application in this proceeding. Manufacturers also purchases Contract Demand gas from Transco near the Downingtown Compressor Station in South-East Pennsylvania. Additionally, Manufacturers purchases Contract Demand gas from Tennessee

454 Gas Pipeline Company at the Milford Compressor Station in the immediate vicinity of its principal deliveries to Home in North-East Pennsylvania and in Docket No. CP69-107 proposes to acquire more gas from Tennessee at that point. Increases in these deliveries to Manufacturers at Tamarack, at Downington, and at Milford all constitute economic alternatives to the problems alleged by Manufacturers and Home.

But Applicants do not want such solutions. They want to force "coordinated operations" and to begin them under a temporary certificate in an effort to prejudice the final decision in their favor. So they assert, erroneously, that there is no solution other than the purchase of additional Contract Demand and the construction of facilities, asserting also that Home would be selling gas at a loss if it were required to purchase Contract Demand and sell that gas only at its commodity rate. An emergency within the meaning of the proviso of Section 7(c) does not exist merely because the economics of a sale may be unsatisfactory or the parties prefer other arrangements, particularly when the economics are of Applicants' own making (see footnote 1, supra).

Finally, the alleged necessity of having the additional Contract Demand by November 1, 1968, is without support and cannot be supported. November 1 is the beginning of the contract year; this is the only significance of that date. Obviously, in the heating season Rockland and Central Hudson are taking their gas requirements at the maximum demand or substantially close to maximum demand. It is in the summer months that Rockland and Central Hudson will be tak-

ing most of the additional 6,604,100 Mcf. Consequently, Applicants' claim that the additional Contract Demand and facilities would be needed by November 1, 1968, will not stand scrutiny. There is ample time to build facilities, if they were necessary, which they are not. There is ample time for hearing to determine the public interest and the best means of accomplishing the public interest.

II

THE COMMISSION MAY NOT BY TEMPORARY
CERTIFICATE AUTHORIZE ABANDONMENT OF
SERVICE AND ABROGATE AND SUPERSEDE
RATES AND CHARGES, CONDITIONS OF SERVICE
AND CONTRACTUAL ARRANGEMENTS

Coordinated operations of Manufacturers and Home involves abandonment by Manufacturers of its sale of natural gas to Home and cancellation of the service agreement between them; supersession and cancellation of the separate tariffs of Manufacturers and Home by a joint Manufacturers-Home tariff under which Manufacturers and Home as Sellers will sell gas to the former customers of each who will be customers of Manufacturers and Home; supersession and cancellation of the service agreements between Manufacturers and its customers; supersession and cancellation of the service agreements between Home and its customers; new service agreements between each customer as Buyer and Manufacturers and Home as Seller; establishment of zone rates without determination of the proper zone boundaries and zone rate differentials for the combined operations and tariffs of Manufacturers and Home.

In short, coordinated operations, as proposed, are more than mere integration and interconnection for maximum economy and flexibility of operations. What is proposed is a de facto merger of Manufacturers and Home through radical rate and contract abrogations and rearrangements.

Abandonment of service, involved in the coordinated operations, may not be authorized by a temporary certificate. Indeed, the application of Home and Manufacturers filed in June, 1968 is deficient in failing to apply for abandonment authority under Section 7(a) of the Act. Nor may Manufacturers by its own action abrogate contract relationship, rates and charges, and conditions of service. Neither may the Commission supersede and change tariffs and service agreements, establish zones and zone rates, and abrogate contract relationships, all of which are involved in the coordinated operations proposed by Applicants. These actions, if the Commission may take them at all, may be taken only after notice and hearing, including compliance with the requirements of Sections 4 and 5 of the Act.

Indeed, the Commission cannot discharge its duties under the Act without a determination that the new rates and charges, conditions of service, zones and zone rates, and service agreements meet the standards of the Act which require that all rates, charges, and related practices and conditions of service be just, reasonable, not unduly discriminatory, and non-preferential. The Commission has no data on which to discharge its obligations. With the elimination of the rate schedule and transaction between Manufacturers and Home under coor-

dinated operations, the Commission will have no data upon which it will be able to determine the reasonableness of the rates and charges in each zone. The prima facie evidence is that the proposed absence of rate arrangements between Manufacturers and Home will deprive Penn Gas and other customers of Manufacturers of the benefits of Commission regulation under the Natural Gas Act, and will discriminate unlawfully against them as a result of the unlawful shift to them of the higher cost gas operations of Home.

For these reasons, also, issuance of the temporary certificate is beyond the Commission's authority in the circumstances of this case.

III

ISSUANCE OF THE TEMPORARY CERTIFICATE IS PREJUDICIAL TO PENN GAS

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Applicants contend (Application for Temporary Certificate, p. 6) that "issuance of the temporary authority cannot operate to the future prejudice of any party" in "any pending or future rate case or in any realignment proceeding which may be filed hereafter" (underscoring supplied). They assert that Manufacturers and Home have proposed to maintain separately on their books the revenue received, property accounts, and operating expenses, and to reflect all deliveries of gas between Manufacturers and Home, together with such other records as may be required for appropriate analysis of the individual operations of Home and Manufacturers.

Penn Gas is prejudiced in these proceedings and immediately by the increase in cost of gas that will result from coordinated operations.

Penn Gas is prejudiced immediately in these proceedings by the attempted, illegal abrogation of its service agreement and the effort to force it to buy gas from Manufacturers and Home. Penn Gas is prejudiced immediately by the establishment of zones and zone rates without a hearing and without evidence showing the reasonableness of the zones and zone rates.

The maintenance of separate accounting, mere bookkeeping, does not remove the prejudice in this case resulting from the coordinated operations under a temporary certificate.

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Moreover, as to future rate proceedings and/or realignment proceedings, the maintenance of separate accounts does not avoid the prejudice because that accounting will not reflect any arrangements or transactions between Manufacturers and Home under just and reasonable, and not unduly discriminatory and preferential, rates and charges. It is the latter which bears importantly on the transactions that would be conducted. Here Applicants propose to conduct gas transactions without any economic controls established under a lawful rate schedule. This will present insurmountable difficulties to the establishment of just and reasonable rates, charges, and terms and conditions of service in future rate proceedings.

CONCLUSION

There is no emergency of any kind within the meaning and scope of the second proviso of Section 7(c) of the Act. Gas and facilities

are available to permit Home to deliver an additional annual volume of 6,604,100 Mcf to Rockland and Central Hudson without the purchase of additional Contract Demand by Home from Manufacturers and the construction of 10.1 miles of loop line by Manufacturers. The temporary certificate, if issued, would be prejudicial to Penn Gas and other customers of Manufacturers, and would be illegal because the changes in terms and conditions of service, and abrogation of contract obligations may be effected, if at all, only after notice and hearing, including compliance with the provisions of Sections 7(a), 4 and 5 of the Act.

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WHEREFORE, for each and all of the reasons set forth by Penn Gas in this Answer, Applicants' application for temporary certificate should be denied.

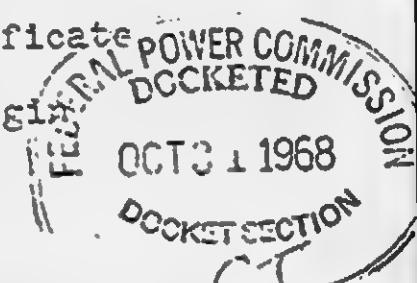
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464

STATEMENT OF ORANGE AND ROCKLAND UTILITIES, INC.
IN SUPPORT OF APPLICATION FOR TEMPORARY CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY

Orange and Rockland Utilities, Inc. (Orange and Rockland) supports the application of The Manufacturers Light and Heat Company (Manufacturers) and Home Gas Company (Home) for a temporary certificate of convenience and necessity authorizing coordination of their operations, and urges the Commission to grant such temporary certificate promptly so that such coordinated operation may begin November 1, 1968.



Orange and Rockland is a substantial customer of Home and is contractually entitled to purchase up to 28,300 Mcf of natural gas per day under Home's CDS-1 Rate Schedule. As a direct result of the settlement rate levels approved by the Commission in Docket No. RP66-6, and particularly the substantially reduced CDS-1 commodity rate level, Orange and Rockland intends to increase the load factor of its purchases from Home from the historic annual load factor of approximately 40% to a load factor at or near 100%.

465 In their application Manufacturers and Home state that in order for Manufacturers to meet the requirements of Home, and in turn the requirements of Home's customers including Orange and Rockland, there is no viable alternative to coordinated operation. It appears clear from the application that coordinated operation will provide substantial economic and operating benefits, will avoid the necessity of constructing expensive facilities and will permit Manufacturers to optimize its purchases of gas. Under these circumstances Orange and Rockland believes that it is imperative that Manufacturers and Home be authorized to coordinate their operations pursuant to a temporary certificate until such time as a decision can be reached with respect to permanent certification.

No facilities will have to be constructed to permit coordinated operation. Therefore, the common objection to issuance of a temporary certificate, i.e. that the Commission will be confronted with a fait accompli when considering permanent certification, does not apply here. To the contrary, the willingness of Manufacturers and Home to continue to

record separately all data relevant to the costs and revenues of Manufacturers and Home, and their willingness to suspend operation of the minimum commodity provisions of their tariffs during the period of temporary certification provides complete protection⁴⁶⁶ for the customers of both companies during such period, and would permit immediate return to the existing uncoordinated status in the event the Commission should ultimately deny permanent certification.

Orange and Rockland understands that only one customer, Pennsylvania Gas and Water Company (Penn Gas) has raised any objection to temporary certification of coordinated operation. It is significant that the objections raised are in the nature of unsupported and speculative assertions without specification of any injury whatsoever, that would, in fact, be sustained by Penn Gas as a result of issuance of a temporary certificate.

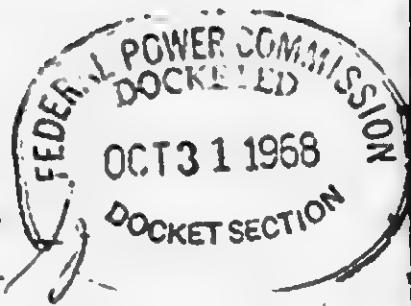
WHEREFORE, Orange and Rockland respectfully urges the Commission to issue a temporary Certificate of Public Convenience and Necessity, authorizing Manufacturers and Home to coordinate their operations commencing November 1, 1968.

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[Caption Omitted in Printing]

Statement of
 Central Hudson Gas & Electric Corporation
 in Support of Application for Temporary Certificate
 of Public Convenience and Necessity



Central Hudson Gas & Electric Corporation (Central Hudson)

hereby expresses its support of the joint application of the Manufacturers Light and Heat Company (Manufacturers) and Home Gas Company (Home) for the issuance of a temporary certificate of public convenience and necessity authorizing Manufacturers and Home to coordinate their operations commencing November 1, 1968. In support of its position, Central Hudson respectfully represents the following:

1. Central Hudson believes that coordinated operations will permit Home and Manufacturers to supply their customers in a more economical manner, and that the economies achieved will benefit both Manufacturers and Home and all of their respective customers.

2. Coordinated operations will permit removal of the artificial "rate barrier" between the two companies, thereby achieving at least a partial integration of the transmission properties of the two companies. Central Hudson has urged such integration for many years, and believes that coordinated operation is an appropriate step in this direction.

469

3. Central Hudson recognizes that its interests do not necessarily coincide with those of certain other customers of Home and Manufacturers. However, Central Hudson urges the Commission to recognize that the interests of one customer - Pennsylvania Gas and Water Company (Penn Gas), which has expressed opposition to both the original application for coordinated operations and to the present application for temporary certification - do not coincide with the interest of any other customer of Manufacturers or Home. Penn Gas has recently filed with this Commission in Docket No. CP69-100 a request to authorize transfer to another supplier of most of the

Penn Gas load presently supplied by Manufacturers. A customer who is seeking virtual abandonment of the Manufacturers' system as a supplier hardly represents the best interests of Manufacturers' other customers.

4. Although Central Hudson supports the application for temporary certification, and does not seek formal hearing on the matter of this docket, it has, in its petition for intervention, reserved to itself the right to take whatever action may be necessary to protect its own interests in the event that this Commission calls a public hearing in this docket. Moreover, Central Hudson's support of this application is without prejudice to its position with respect to any pending or future rate case, or any realignment proceeding which may be filed hereafter.

Wherefore, Central Hudson respectfully requests that this Commission approve the application of Manufacturers and Home for a temporary certificate of public convenience and necessity.

Dated: October 30, 1968

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[Caption Omitted in Printing]

473
ANSWER OF THE MANUFACTURERS
LIGHT AND HEAT COMPANY AND HOME
GAS COMPANY TO THE "ANSWER OF
PENNSYLVANIA GAS AND WATER COMPANY
IN OPPOSITION TO APPLICATION
FOR TEMPORARY CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY"

474
For the twelve months ending October 31, 1969, Home will require over 3 $\frac{1}{4}$ million Mcf in order to meet its customers' requirements. Historically, through utilization of its storage facilities, Home has purchased its entire pipeline requirements from Manufacturers at approximately 100% load factor. In order to obtain its annual requirements Home must have a contract demand of 94,500 Mcf beginning November 1, 1968. This is not

available. In order to supply Home with 94,500 Mcf every day of the year Manufacturers needs additional facilities and gas supply.* There is simply no way for Manufacturers to comply with its due diligence** obligation of providing Home with its annual requirements on a firm basis. Lack of permanent authorization of coordinated operations by November 1, 1968, therefore places Home and Manufacturers in an emergency situation on that date. Simply stated, Home is in an emergency situation because it lacks the gas supply required by its customers; Manufacturers is in an emergency situation because it cannot supply Home pursuant to its tariff responsibility of due diligence.

475

Manufacturers and Home urge that, based on existing tariffs and rate schedules, a temporary certificate promptly effectuating coordinated operations will provide the only guarantee that Home will be in a position to meet the annual firm requirements of its customers.

If Penn Gas has its way, hearings in this proceeding will be required before a permanent certificate is issued. Thus, Home and Manufacturers are immediately faced with the proposition that final determination on their application for coordinated operations will not be made in time to assure Home its 1968-69. gas supply.

*Even the Service Agreement between Manufacturers and Home reflecting a contract demand of 85,400 Mcf does not provide Home with a solution to its problems beginning November 1, 1968. That Service Agreement which was filed conditionally on October 28, 1968 fails by more than 3,300,000 Mcf to provide Home's annual requirements.

**Manufacturers' FPC Gas Tariff - Fifth Revised Volume No. 1, Section 10.2(a) of the General Terms and Conditions.

Alternative methods of meeting Home's annual requirements pending final determination in these proceedings would also require Commission authorization and could very well involve less efficient arrangements for gas supply with irreversible implications. These possible alternatives include either the construction of additional facilities by Manufacturers to provide capacity for an increased contract demand for Home, or as suggested by Penn Gas (at Page 10 of its document), the creation of a form of off-peak rate schedule by Manufacturers, or acquisition of additional gas supplies from southwest suppliers. Any of these alternatives could very well involve substantial opposition by Penn Gas, as well as other customers. In contrast to these alternatives, temporary authorization of coordinated operations would not involve construction of facilities and would in no way prejudice any customers of Manufacturers or Home. Therefore, applicants submit

476 that temporary authorization provides the only feasible insurance that Home's annual requirements will be met pending final determination of these proceedings.

* * *

477

SUMMARY OF PENN GAS REQUIREMENTS
FROM MANUFACTURERS
AND RELATED LOAD FACTORS, BY YEAR,
FOR THE FIVE-YEAR PERIOD ENDING DECEMBER 31, 1971

<u>Year</u>	<u>Peak Day Requirements</u>		<u>Annual Requirements</u> (3) Mcf	<u>CD Load Factor</u> (4) %
	<u>CDS-1</u> (1) Mcf	<u>WS-MDQ</u> (2) Mcf		
1967 - Actual	18,500	10,887	5,970,145	88
1968 - Estimated	18,500	10,887	5,108,500	76
1969 - Estimated	18,500	10,887	3,622,100	54
1970 - Estimated	18,500	10,887	3,622,100	54
1971 - Estimated	18,500	10,887	3,622,100	54

478 The 1967 volumes are actual; data for the years 1968-1971 are as provided by Penn Gas. This table shows that the Contract Demand load factor of Penn Gas's purchases from Manufacturers during 1967 was 88 percent and that Penn Gas intends to progressively reduce its annual purchases from Manufacturers. The purchase load factor from Manufacturers projected in the estimate of Penn Gas drops to 76 percent in 1968 and to 54 percent in 1969 and thereafter through 1971.

The Penn Gas estimates reflect an intent to transfer an ever-increasing portion of Manufacturers' historical sales to Penn Gas's other pipeline supplier, Transcontinental Gas Pipe Line Corporation (Transco). Moreover, on October 9, Penn Gas filed an application in Docket No. CP69-100 requesting Commission authorization for Transco to displace Manufacturers as to almost all of Penn Gas's present purchases from Manufacturers; Penn Gas in that docket seeks authority to transfer to Transco 23,845 Mcf per day out of Penn Gas's present entitlement from Manufacturers of 29,387 Mcf per day.

THE PRESENT EMERGENCY IS THE
INEVITABLE RESULT OF THE SEQUENCE OF EVENTS

For the past ten years Home has experienced little or no market growth. This has been true since shortly after the Commission authorized Home's two largest nonaffiliated customers, Orange and Rockland Utilities, Inc. (Rockland) and Central Hudson Gas Corporation (Central Hudson), to purchase gas from Tennessee Gas Pipeline Company. (Tennessee Gas Transmission Company, 14 F.P.C. 544 (1955)).

Over the past ten years the New York Commission, as well as Rockland and Central Hudson, has repeatedly expressed strong dissatisfaction over the differential between Home's and Manufacturers' rates.

At Docket Nos. RP66-5 and RP66-6 Manufacturers and Home redesigned their rates to be more competitive with other pipelines.

The New York customers advised Home that they would not agree to rate levels which were not competitive with other pipelines and in particular would not agree to rate levels where the commodity component was not competitive with the cost of other fuels.

Settlement conferences in Docket Nos. RP66-5 and RP66-6 took place in the spring of 1968. It soon became apparent that Rockland and Central Hudson would not agree to settlement of Manufacturers' or Home's rates if the resultant commodity rate to them was in excess of 31¢ per Mcf. The proposed coordinated operations and alternative solutions were discussed at such conferences but it was agreed that the rate settlements were not

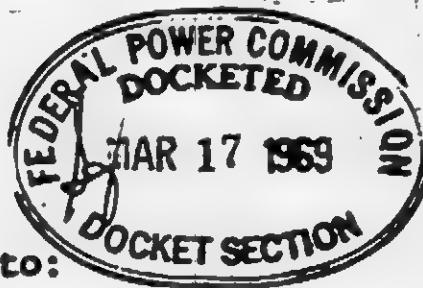
proper vehicles for such a change in operations. It was determined that a certificate application would be a better vehicle to effectuate coordinated operations. The rate settlements were filed with the Commission on June 4, 1968. Sixteen days later, on June 20, 1968, Manufacturers and Home filed for coordinated operations in this Docket No. CP68-364. The Commission's order approving the settlements (including Home's reduced commodity rate of 30.98¢ per Mcf) was not issued until October 8, 1968. The instant application for temporary certificate was filed two days later on October 10.

It is important to realize that Rockland and Central Hudson would not increase their annual purchases from Home under Home's commodity rate of 34.5¢ per Mcf which existed prior to the Commission's order of October 8. So long as the 34.5 cent commodity rate was in collection, there was no ground upon which Home and Manufacturers could legitimately request immediate effectuation of coordinated operations.

* * *

C
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FEDERAL POWER COMMISSION
WASHINGTON, D.C. 20426



In reply refer to:
 BNG - PL/C&R
 Docket No. CP68-364
 Manufacturers Light and Heat
 Company and Home Gas Company

MAR 17 1969

Manufacturers Light and Heat
 Company and Home Gas Company
 800 Union Trust Building
 Pittsburgh, Pennsylvania 15219

Attention: William Anderson, Esquire
 Edward B. Calland, Esquire
 P. J. D'Agostino

Dear Sir:

Based upon the allegations presented in the request for temporary certificate filed in Docket No. CP68-364 on October 10, 1968, the Commission finds that an emergency exists within the meaning of Section 7 of the Natural Gas Act, and a temporary certificate is hereby issued to Manufacturers Light and Heat Company and Home Gas Company to coordinate their operations as proposed in the subject application.

This temporary authorization is issued upon the express conditions that (1) the companies' maintain their books and records in such a manner that in the event the Commission denies the companies' a permanent certificate Manufacturers and Home may resume individual operations; (2) the companies will bill their respective customers at each company's filed rates, including rates subject to refund at Dockets Nos. RP69-16 and RP69-17 upon their effectiveness, and will not impose any minimum annual commodity bill against any customer; and (3) the granting of this temporary certificate

will have no effect on the jurisdiction of the Securities and Exchange Commission to consider the issue of the retainability of Home Gas Company as part of the integrated natural gas system of The Columbia Gas System, Inc., which issue was reserved for future consideration and determination by an SEC Order of November 30, 1944.

Further, issuance of the temporary authorization is without prejudice to such final disposition of the application for certificate as the record may require.

By direction of the Commission. Commissioner Bagge not participating.

[Subscription Omitted in Printing]

496 PITTSBURGH GROUP COMPANIES
RECEIVED
 APR 1 1969 800 UNION TRUST BUILDING
 FEDERAL POWER COMMISSION

COLUMBIA GAS SYSTEMS



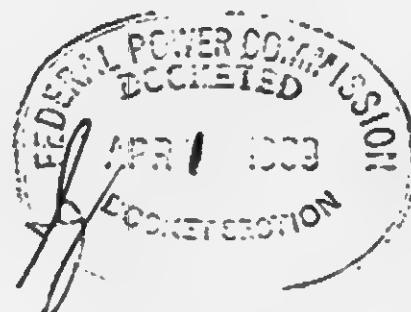
PITTSBURGH, PENNSYLVANIA 15219

March 28, 1969

Federal Power Commission
 General Accounting Office Building
 441 "G" Street, N. W.
 Washington, D. C. 20426

Attention: Mr. Gordon M. Grant, Secretary

Gentlemen:



Subject: Temporary Certificate in Docket No. CP68-364
Authorizing Coordinated Operations

In accordance with the Commission's letter order of March 17, 1969, granting a temporary certificate in Docket No. CP68-364, this is to advise that effective March 18, 1969, The Manufacturers Light and Heat Company (Manufacturers) and Home Gas Company (Home) commenced the coordination of their operations in conformity with the conditions set forth in said letter order. Operation under the current service agreement between the two companies, dated October 23, 1968, effective November 1, 1968, is being suspended pending final Commission decision in Docket No. CP68-364.

A copy of this letter is being mailed to all wholesale customers of Manufacturers and Home, interested parties and State Commissions.

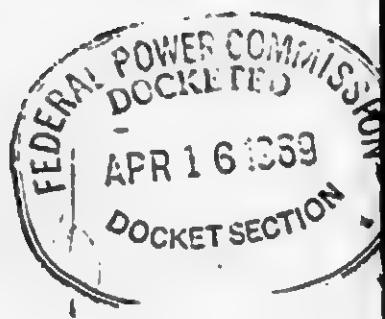
Very truly yours,

P. J. D'Agostino
 Vice President

COLUMBIA GAS OF PENNSYLVANIA, INC. • CUMBERLAND AND ALLEGHENY GAS COMPANY
 THE MANUFACTURERS LIGHT AND HEAT COMPANY • COLUMBIA GAS OF NEW YORK, INC.
 COLUMBIA GAS OF MARYLAND, INC. • HOME GAS COMPANY

[Caption Omitted in Printing]

APPLICATION
OF PENNSYLVANIA GAS AND WATER COMPANY
FOR REHEARING AND STAY OF LETTER-ORDER
ISSUED MARCH 17, 1969



Pennsylvania Gas and Water Company (Penn Gas), being aggrieved by the Federal Power Commission's letter-order issued March 17, 1969, applies for rehearing and stay thereof, pursuant to Section 19(a) of the Natural Gas Act, as amended (Act), and Section 1.34 of the Commission's Rules of Practice and Procedure.

By said letter-order, the Commission issued a temporary certificate under the second proviso of Section 7(c) of the Act to The Manufacturers Light and Heat Company (Manufacturers) and Home Gas Company (Home) authorizing them "to coordinate their operations as proposed in" their joint application for a permanent certificate. The temporary authorization rests upon a conclusion that "an emergency exists within the meaning of Section 7 of the Natural Gas Act," based "upon the allegations presented in the request for temporary certificate filed . . . on October 10, 1968."

SPECIFICATIONS OF ERROR

1. The letter-order of March 17, 1969 is unlawful in that there was no emergency within the meaning of the second proviso of Section 7(c) of the Act when Manufacturers and Home filed their joint application for temporary authorization on October 10, 1968, none when the Commission acted five months later on March 17, 1969, and none during the intervening period between October 10, 1968 and March 17, 1969.

2. The letter-order of March 17, 1969 is unlawful in that the Commission's conclusion that an "emergency exists within the meaning of Section 7 of the Natural Gas Act" is not supported by substantial evidence and is, in fact, contrary to the evidence.

3. The letter-order of March 17, 1969 is unlawful in that the Commission has not made the essential findings of fact required by the Natural Gas and Administrative Procedure Acts with respect to the nature and existence of the alleged emergency and the evidentiary facts submitted in Penn Gas' verified answer in opposition to the joint application for temporary authorization, which verified answer disclosed there was no gas supply emergency, but only a desire upon the part of the joint applicants to substitute a new gas supply arrangement, which they alleged to be in their greater economic interest, for an existing gas supply arrangement.

4. The letter-order of March 17, 1969 is unlawful in that the second proviso of Section 7(c) of the Act does not authorize the issuance of a temporary certificate to Manufacturers and Home.

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5. The Commission erred in failing to find that the proposed operations of Manufacturers and Home were not necessary to enable Manufacturers to supply Home with its natural gas requirements commencing November 1, 1968 and to enable Home to serve its market requirements commencing November 1, 1968.

6. The Commission erred in failing to consider and make findings with respect to the facts presented in Penn Gas' verified answer in opposition to the joint application for temporary certificate.

7. The letter-order of March 17, 1969 is unlawful in that it is arbitrary, capricious, not in accordance with law, and is in excess of the Commission's statutory power and authority.

8. In the circumstances of this case, the Commission's issuance of its letter-order of March 17, 1969 without hearing was a gross abuse of discretion and was an unlawful denial of due process of law.

9. The letter-order of March 17, 1969 is unlawful in that without compliance with the requirements of Sections 4 and 5 of the Act, said letter-order changes, supersedes, and abrogates existing rates, charges, classifications, services, regulations, practices, and contracts between Manufacturers and Home and between Manufacturers and Penn Gas.

10. The letter-order of March 17, 1969 is unlawful in that in violation of the requirements of the Natural Gas Act no rate schedule is on file governing the proposed operations as a consequence of which there are no means by which the proposed operations can be economically evaluated, controlled, and regulated and compliance with the rate standards of the Act assured.

506 11. The letter-order of March 17, 1969 is unlawful in that Penn Gas was denied due process of law.

12. The letter-order of March 17, 1969 is unlawful in that the Commission has by that order authorized an unduly preferential arrangement pursuant to which Manufacturers will be delivering natural gas to Home in quantities substantially in excess of the contract demand theretofore in effect between them without Home paying to Manufacturers the contract demand charges that Manufacturers exacts from its other customers. United Fuel Gas Co., G-11060, 19 FPC 300.

STATEMENT IN SUPPORT OF
SPECIFICATIONS OF ERROR

Manufacturers and Home on October 10, 1968 alleged that they faced "a serious emergency" commencing November 1, 1968 (Joint App. for Temp. Auth., p. 5). Manufacturers, it was alleged, "could not supply the level of requirements needed by Home if" Manufacturers and Home "continue to operate as separate, noncoordinated companies without the construction of a 10.1 mile loop" on Manufacturers' system which could not be authorized by the Commission and constructed "in time to enable Manufacturers to supply Home the required level of service under noncoordinated operations commencing November 1, 1968" (*Ibid.*).

The Commission did not act on the joint application for temporary authorization until March 17, 1969, five months after the application was filed, four and a half months after November 1, 1968, the date when the alleged emergency was to begin, and after the 1968-1969 heating season, when demands for gas are at their peak, was over.¹ These facts alone refute the claims of Manufacturers and Home of a gas supply emergency commencing November 1, 1968 and expose as without foundation in fact the Commission's conclusion of March 17, 1969 that an emergency exists within the meaning of the second proviso of Section 7(c) of the Act based on the allegations of Manufacturers and Home made October 10, 1968.

The Commission's order is totally devoid of any findings which disclose the reasoning or path by which it reached that unfounded conclusion.

¹ The flow diagrams in the application were confined to the 1968-1969 heating season.

It is an odd "emergency", alleged to commence on November 1, 1968, the beginning of the 1968-1969 heating season, unless operations were coordinated, which was able to wait for Commission action until March 17, 1969, over five months, without such operations all through the peak gas demand season.

The answer is, of course, that no emergency within the meaning of the second proviso of Section 7(c) existed when the application for temporary authority was filed on October 10, 1969, there was none commencing November 1, 1968, and there was none on March 17, 1969 when the Commission acted. There never was an emergency and there is now no emergency.

508 The patent unlawfulness of the letter-order is not overcome by attaching conditions to the grant of temporary authorization with respect to bookkeeping and billing. The bookkeeping and billing conditions are irrelevant to the question of the lawfulness of the letter-order. The conditions cannot create lawful authority where none exists, and cannot immunize illegal action from challenge. The Commission should respect the limitations on its authority under the second proviso of Section 7(c).

In its verified answer opposing the application, Penn Gas stated (pp. 11-12):

Finally, the alleged necessity of having the additional Contract Demand by November 1, 1968, is without support and cannot be supported. November 1 is the beginning of the contract year; this is the only significance of that date. Obviously, in the heating season Rockland and Central Hudson are taking their gas requirements at the maximum demand or substantially

close to maximum demand. It is in the summer months that Rockland and Central Hudson will be taking most of the additional 6,604,100 Mcf. Consequently, Applicants' claim that the additional Contract Demand and facilities would be needed by November 1, 1968, will not stand scrutiny. There is ample time to build facilities, if they were necessary, which they are not. There is ample time for hearing to determine the public interest and the best means of accomplishing the public interest.

509 Penn Gas was correct and events have confirmed the correctness of its position. Yet, the Commission, without mention of Penn Gas' opposition and its verified answer and without hearing, although there was ample opportunity to investigate the allegations of the Applicants through hearing, makes the unfounded statement on March 17, 1969 that an emergency commenced November 1, 1968.

Without extending this statement in support of this application for rehearing, suffice it to say that Penn Gas was also correct in its answer in opposition to the temporary authorization on the ground that there was no unforeseen combination of circumstances that resulted in a gas shortage demanding immediate action. Penn Gas established, after a review of the chronology of events, that there was no unforeseen combination of circumstances. Manufacturers and Home knew as early as February 2, 1968 that an additional volume of 6,604,100 Mcf would be needed by Home if Home established a commodity rate of 32¢ per Mcf or less; Manufacturers and Home knew also they could not assume that the additional volume would be available through the proposed operations because they were on notice as early as March 1, 1968 that the proposed operations would be opposed; that Home, with the aid and con-

sent of Manufacturers, nevertheless knowingly and deliberately established Home's commodity rate at 31¢ per Mcf; that the 6,604,100 Mcf was available to Manufacturers for delivery to Home without the construction of additional facilities, without the purchase by Home of additional contract demand from Manufacturers, and without the proposed operations; and that Manufacturers and Home were not interested in the availability of the gas except through the proposed operations and deliberately chose to pursue that operations route.

An emergency within the meaning of the second proviso of Section 7(c) does not exist where gas is available as it was to Manufacturers and Home without the proposed operations. Their preference for the economics of one arrangement over another does not constitute a gas shortage emergency under the second proviso of Section 7(c) of the Act. Such preference may be achieved only through compliance with the requirements of Sections 4 and 5.

The Commission may not through a temporary certificate authorize, as it has, changes in rates, charges, contracts, practices, regulations, terms and conditions of service. These may be effected, if at all, only after compliance with Sections 4(d) and (e) and 5(a) of the Act.

The Commission may think its bookkeeping and billing conditions maintain the status quo as to these matters, but the fact is, as Manufacturers and Home advised the Commission in their application for temporary authorization (p. 2), under the proposed operations the status quo cannot be maintained. They said (p. 2):

Under coordinated operations, Manufacturers would discontinue the separate billing of interstate gas to Home and the combined market requirements of the

customers of Manufacturers and Home would be furnished in a manner which would utilize most effectively the interstate pipeline and storage facilities of Manufacturers and Home to the maximum advantage of both companies and their customers.

In short, the proposed operations wipe out the revenue-cost accounting transactions between Manufacturers and Home for the sale and purchase of gas. There is more than mere integration and interconnection for maximum economy and flexibility of operations. There is a de facto merger of Manufacturers and Home through a radical rate and contract abrogation without a hearing and determination that the proposed operations are just, reasonable, not unduly discriminatory, and non-preferential, and without a determination that Manufacturers' rates, charges, terms and conditions of service under the proposed operations are just, reasonable, not unduly discriminatory and preferential.

STATEMENT IN SUPPORT OF STAY OF LETTER-ORDER

The Commission issued the temporary authorization on condition that Home and Manufacturers "maintain their books and records in such a manner that in the event the Commission denies the companies a permanent certificate, Manufacturers and Home may resume individual operations", and that they continue to "bill their respective customers at each company's filed rates, including rates subject to refund at Dockets Nos. RP69-16 and RP69-17 upon their effectiveness" (Letter Order, p. 1).

Presumably, the Commission attached these conditions in an effort to and in the belief that the conditions would prevent immediate and irreparable injury to Penn Gas and other customers of Manufacturers.

512 These conditions, however, are futile. Penn Gas is subjected to immediate and irreparable injury.

Under the proposed operations, as Manufacturers and Home put the Commission on notice in their application, and have since confirmed by letter of March 28, 1969 (Appendix A to this application), Manufacturers' rate schedule for the sale of gas to Home is nullified. There is no longer any rate schedule between Manufacturers and Home, no longer any billing under that or any rate schedule, and no payment by Home to Manufacturers for the transactions between them. As a consequence, the books and records of Home and Manufacturers will not and cannot reflect a transaction between them, and there is no basis upon which the flows of gas between them are to be evaluated and paid for under the proposed operations.

In the absence of a rate schedule controlling the flow of gas between Manufacturers and Home under the proposed operations, there are no publicly available records showing Manufacturers' revenues from all of its gas sales and Home's total operating expenses, including cost of gas purchased. There are, therefore, no public records for determining whether Manufacturers' rates are just, reasonable, not unduly discriminatory, or preferential. This is an immediate and irreparable injury to Penn Gas flowing from the letter-order of March 17, 1969.

513 A basic requirement of the Natural Gas Act (Section 4), implemented by the Commission's regulations, is that an effective rate schedule must be on file for gas transactions under the Act. The purpose of the requirement is obvious. It is to protect customers from unjust, un-

reasonable, unfairly discriminatory or preferential rates. The letter-order of March 17, 1969, which wipes out the existing rate schedule between Manufacturers and Home and requires no substitute schedule to evaluate, control and regulate the proposed operations in accordance with the rate standards of the Act, flouts these requirements with immediate and irreparable injury to Penn Gas.

Sections 4 and 5 of the Act authorize a customer to file a complaint against a rate schedule for violation of the standards of the Act. Penn Gas' rights under such Sections are immediately and irreparably injured because there is no rate schedule governing the proposed operations which obviously bear on the reasonableness of rates to Penn Gas from Manufacturers.

Penn Gas also suffers immediate and irreparable injury from Manufacturers' loss of revenues produced by the letter-order of March 17, 1969 since the revenues previously received by Manufacturers from the sale of contract demand gas to Home are no longer available to reduce Manufacturers' cost of service to Penn Gas.

In addition, in the event of denial of a permanent certificate, the Commission does not and cannot make provision for the restoration of the status quo ante for the interim period of operations, and the fact is that there will be no records and no basis for such restoration.

The Commission refers to RP69-16 and RP69-17 in which Manufacturers and Home, respectively, have filed rate increases, and provides that each shall bill their respective customers at each company's proposed increased rates upon their effectiveness, subject to refund.

The Commission does not require that Manufacturers bill Home pursuant thereto. Presumably, the Commission somehow labors under the impression that this provision will save Penn Gas harmless. But what the Commission apparently does not realize is that the rate increases are based on non-coordinated operations and that under the proposed operations the just and reasonable cost of service for Manufacturers and Home can no longer be determined separately because there is no longer any basis established for the determination of the cost of service between Manufacturers and Home. Penn Gas' injury flowing therefrom is immediate and irreparable.

The fact that operations are to be coordinated does not mean that there is no need for a rate schedule and financial accounting between Manufacturers and Home, since it is only through such a rate schedule and financial accounting that a just and reasonable cost of service can be determined for each company. This requires a rate schedule for the coordinated operations. Indeed, this is evident from the many rate schedules on file with the Commission under the Federal Power Act which provide rates and charges for the members of a coordinated or integrated operation. The authorization of operations without a rate schedule immediately and irreparably injures Penn Gas.

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WHEREFORE, Pennsylvania Gas and Water Company prays that:

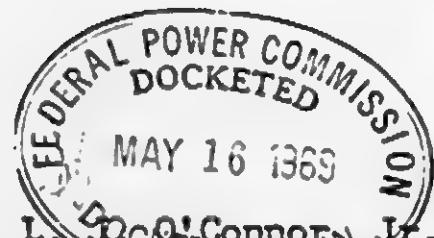
1. The Commission stay the letter-order issued March 17, 1969, pending consideration of this application for rehearing;
2. The Commission grant rehearing of its letter-order issued March 17, 1969, vacate said letter-order, and deny the application for

temporary certificate of Manufacturers and Home to coordinate their operations:

3. In the event the Commission denies this application for rehearing, the Commission further stay the letter-order issued March 17, 1969, pending expiration of the time for filing a petition for review; and

4. The Commission grant Pennsylvania Gas and Water Company such other and further relief as may in the premises be appropriate and proper.

[Subscription Omitted in Printing]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Certificates (Temporary)

Before Commissioners: Lee C. White, Chairman; L. ~~SOCIAL~~ Connally Jr.,
John A. Carver, Jr., and Albert ~~B.~~ Brooke, Jr.The Manufacturers Light and
Heat Company and
Home Gas Company)

Docket No. CP68-364

ORDER DENYING REHEARING

(Issued May 16, 1969)

On April 16, 1969, Pennsylvania Gas and Water Company (Penn Gas) filed an application for rehearing of our letter order issued March 17, 1969, in which we granted, pursuant to Section 7(c) of the Natural Gas Act and Section 2.57 of the Commission's Rules of Practice and Procedure, a conditioned temporary certificate to two affiliated natural gas companies, Manufacturers Light and Heat Company (Manufacturers) and Home Gas Company (Home), 1/ authorizing them to coordinate their operations in certain respects and, pursuant to such coordinated operations, to make additional annual sales of gas amounting to 6.6 million Mcf to Home's two principal nonaffiliated customers, Orange and Rockland Utilities, Inc. (Rockland) and Central Hudson Gas and Electric Corporation (Central Hudson). These additional volumes will be sold to Rockland and Central Hudson at 30.98c per Mcf (hereinafter rounded to 31c), which is the commodity rate under Home's presently effective CDS-1 rate schedule, and will enable these customers to increase their annual load factors from 40 percent--load factor levels which have prevailed for approximately 10 years--to almost

1/ We also refer to these two companies jointly as the Applicants.

539 Docket No. CP68-364

- 2 -

100 percent. This sudden and substantial increase in the market for gas appears to be attributable to the recent settlement of Home's rate proceeding in which its commodity rate was reduced from 38.48¢ to 31¢ as part of the general restructuring of its tariff (along with those of the other companies comprising Columbia Gas System, Inc., including Manufacturers). ^{2/}

Penn Gas contends that our letter order was unlawful because the Applicants have not established that an emergency exists within the meaning of Section 7(c) of the Natural Gas Act and that it is therefore not permitted by the Act. Additionally, it argues that the authorization granted by the Commission was unnecessary to enable Manufacturers and Home to meet their market requirements; that the issuance of the letter order was an abuse of discretion and an unlawful denial of due process of law; that the letter order unlawfully changes existing rates between Manufacturers and Home and between Manufacturers and Penn Gas; that there is no rate schedule on file governing the proposed operations in violation of the Act; and that the Commission has unlawfully authorized a preferential arrangement whereby Manufacturers will deliver natural gas to Home in excess of its contract demand volumes without requiring Home to pay Manufacturers the related contract demand charges required of other customers by Manufacturers. For reasons stated hereinbelow Penn Gas' arguments are rejected and we again find that the temporary authorization issued on March 17, 1969, was required by the public convenience and necessity and lawfully issued under the Act. We find, also, that Penn Gas' request for a stay of our letter order should be denied.

The underlying thrust of Penn Gas' application for rehearing is that, contrary to the apparent intent of the Commission's letter order, the rights of Manufacturers' other

^{2/} See Manufacturers Light and Heat Company, 40 FPC _____ and Home Gas Company, 40 FPC _____, Order Approving Rate Settlement Agreement and Releasing Refunds, both orders were issued on October 8, 1968, in Docket No. RP66-5 and RP66-6, respectively.

540 Docket No. CP68-364

- 3 -

customers to protection against any adverse impact of the temporary authorization in the event a permanent certificate is denied will not be maintained during its term because Manufacturers intends to discontinue the separate billing of interstate gas to Home (Application for Rehearing, p. 8). Thus, it is contended, "the proposed operations wipe out the revenue-cost accounting transactions between Manufacturers and Home for the sale and purchase of gas" and thereby render impervious to correction any resulting discriminatory rate treatment imposed upon Penn Gas, and, presumably, other customers of Manufacturers. (Ibid.).

In their application for a temporary certificate the Applicants proposed to commence coordinated operations under a single joint tariff but with two sales zones, one being the area now served by Manufacturers and the second being that presently served by Home, with the zone rates equal to those previously charged by Manufacturers and Home, respectively. However, we expressly conditioned the temporary to require the Applicants to do the following:

(1) maintain books and records in such a manner that in the event the Commission denies the companies permanent certificate Manufacturers and Home may resume individual operations; and

(2) bill their respective customers at each company's filed rates, including rates subject to refund at Docket Nos. RP69-16 and RP69-17 upon their effectiveness *

Further, the temporary authorization was expressly issued "without prejudice to such final disposition of the application for certificate as the record may require."

By the attachment of these conditions, in addition to the general language set forth above, we contemplated that the elimination of the sales relationship between Manufacturers and Home during the term of temporary authorization, would permit these affiliates of Columbia System to make the

*This paragraph is reproduced as corrected pursuant to Commission Errata Sheet (R.544).

541 Docket No. CP68-364

- 4 -

additional sales to Rockland and Central Hudson --without disrupting the Commission's regulation of them on an individual company basis-- pending final resolution of the propriety of the arrangement. Except for the interim suspension of their service agreement, the Applicants have no authority under the temporary to make any changes to their separate tariffs and rate schedules on file with the Commission, or to effectuate any changes to their corporate books and records maintained pursuant to the Commission's Uniform System of Accounts, prescribed under the Natural Gas Act. Moreover, the Applicants have repeatedly stated in their pleadings herein that they will have available all the data temporary certificate if required. (E.g., Application for Temporary Application, pp. 6-7 and Applicants' Answer to Penn-Gas Application, pp. 6-7 and Applicants' Answer to Penn Gas Motion for a Stay, p. 4). The only material cost component which arguably would not be readily available in regularly maintained accounts, as a result of the suspended service agreement, would be Home's contract demand volume. However, inasmuch as Manufacturers' "books will also reflect all deliveries of gas between Manufacturers and Home," it will be possible to impute an appropriate demand volume based on actual deliveries, if that becomes necessary in rate-making proceedings having part or all of the term of the temporary included in the test period. In this connection, it should be noted that the test periods involved in the Applicants' pending individual company rate cases antedate March 17, 1969, the date of commencement of operations under the temporary authorization. 3/

3/ Both Manufacturers and Home have rate increase applications pending before the Commission in Docket Nos. RP69-16 and RP69-17, respectively. By order issued February 4, 1969 41 FPC ___, we suspended the proposed increases until July 10, 1969, and provided for a hearing thereon. On April 15, 1969, these companies, along with 4 other affiliates of the Columbia Gas System, Inc. filed additional simultaneous rate increase applications in Docket Nos. RP69-32 and RP69-33. See Columbia Transmission Company, Docket No. RP69-28, et al.; Notice of Proposed Changes in Rates and Charges, issued April 22, 1969.

542 Docket No. CP68-364

- 5 -

Under these circumstances we do not see that the temporary authorizes "changes in rates, charges, contracts, practices, regulations terms and conditions of service" detrimental to the rights of the parties to the permanent certificate proceeding or any rate case involving Manufacturers or Home. Certainly, no such threat of irreparable damage has been shown by Penn Gas.

Passing to Penn Gas' other contentions we think that the emergency responded to by the Commission was an evident one. Home's two principal customers were contractually entitled to additional annual volumes of gas and Home was obligated to use "due diligence" to provide such volumes; and importantly, the Applicants asserted in their certificate application that they were able to deliver the additional volumes without the construction of any new facilities.

Under noncoordinated operations Manufacturers' delivery of the incremental volumes would have required additional facilities and volumes would have been sold at an annual \$586,444 loss to Home because Home already purchases gas from Manufacturers which, at a 100 percent load factor, has a combined demand/commodity unit cost of 39.86¢. The resale of these volumes at 30.98¢ would have resulted in a 8.88¢ unit loss. Therefore, to satisfy the requisite incremental 6.6 million Mcf requested by its customers under their existing contracts, Home either had to increase its contract demand from 74,000 Mcf to 94,500 Mcf per day and pay a minimum of 39.86¢ per Mcf for the additional volumes, or obtain the same volumes through coordinated operations which promise to have operational cost savings.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application filed by Penn Gas on April 16, 1969, present no facts or legal principles which would warrant any change in or modification of the Commission's letter order of March 17, 1969.

543 Docket No. CP68-364

- 6 -

The Commission orders:

The application for rehearing and the request for a stay of our March 17, 1969, letter order included therein, filed on April 16, 1969, in this proceeding are denied.

By the Commission.

(S E A L)

Gordon M. Grant,
Secretary.

BRIEF FOR RESPONDENT
FEDERAL POWER COMMISSION

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23051

Pennsylvania Gas and Water Company, Petitioner

Federal Power Commission, Respondent

Manufacturers Light and Heat Company
and Home Gas Company, Intervenors

ON PETITION TO REVIEW AN ORDER OF THE FEDERAL POWER COMMISSION

RICHARD A. SOLOMON,
General Counsel,

PETER H. SCHIFF,
Solicitor,

ROBERT L. RUSSELL,
Assistant General Counsel.

DAVID P. STOVER,
Attorney,
For Respondent

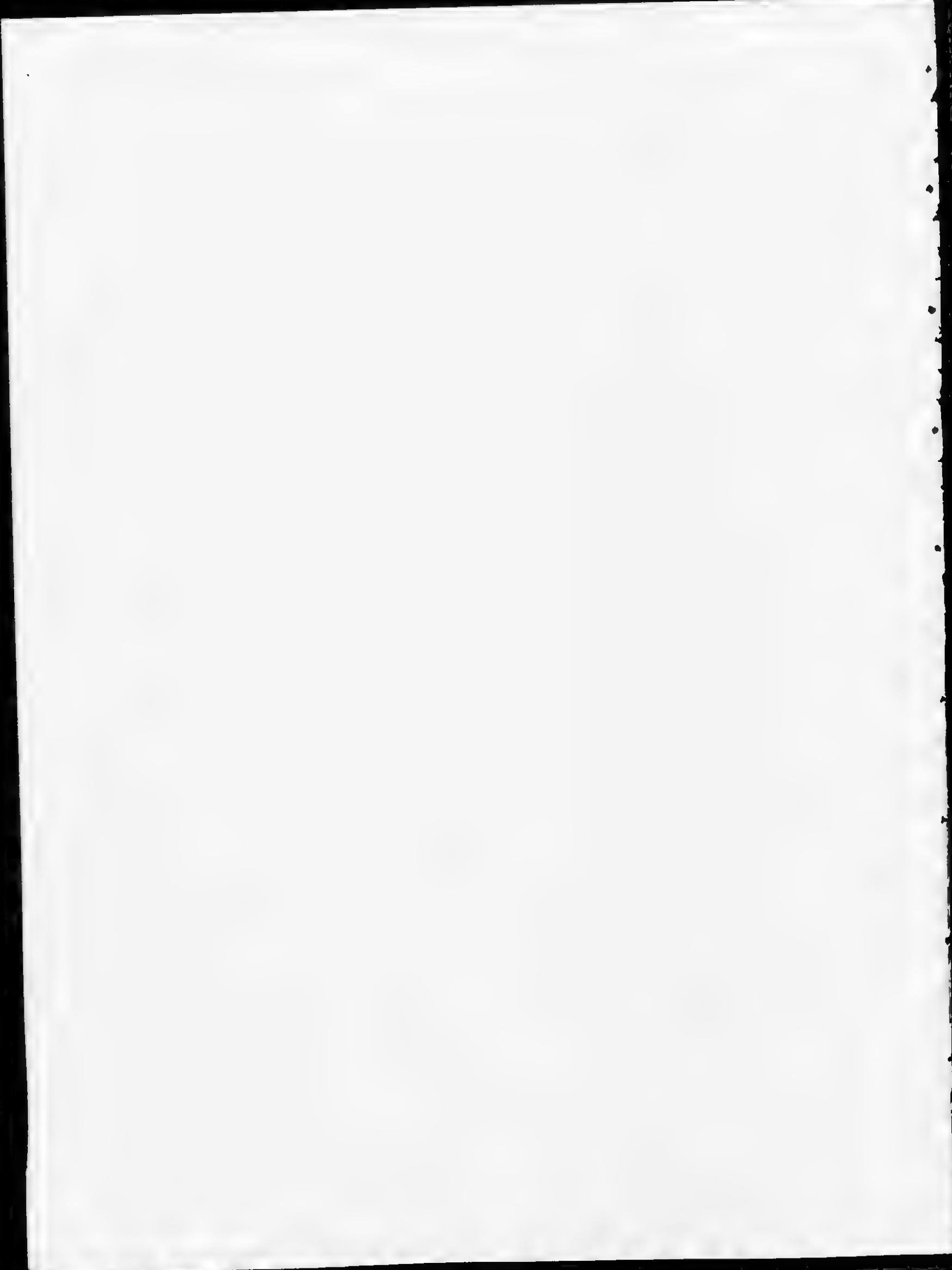
United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 17 1969

Nathan J. Paulson
CLERK

FEDERAL POWER COMMISSION
WASHINGTON, D. C. 20426

SEPTEMBER 17, 1969



INDEX		Page
Counterstatement of the issues presented -----		1
Counterstatement of the case -----		2
Argument -----		15
I. The Commission was fully warranted in concluding that an emergency existed within the meaning of Section 7(c) of the Gas Act permitting the issuance of a temporary certificate -----		15
II. The Commission's temporary certification or coordinated operation by Manufacturers and Home was reasonable -----		25
III. Issuance of the temporary certificate was not invalid because Manufacturers' rates to Home were suspended -----		32
Conclusion -----		39
Appendix -----		40

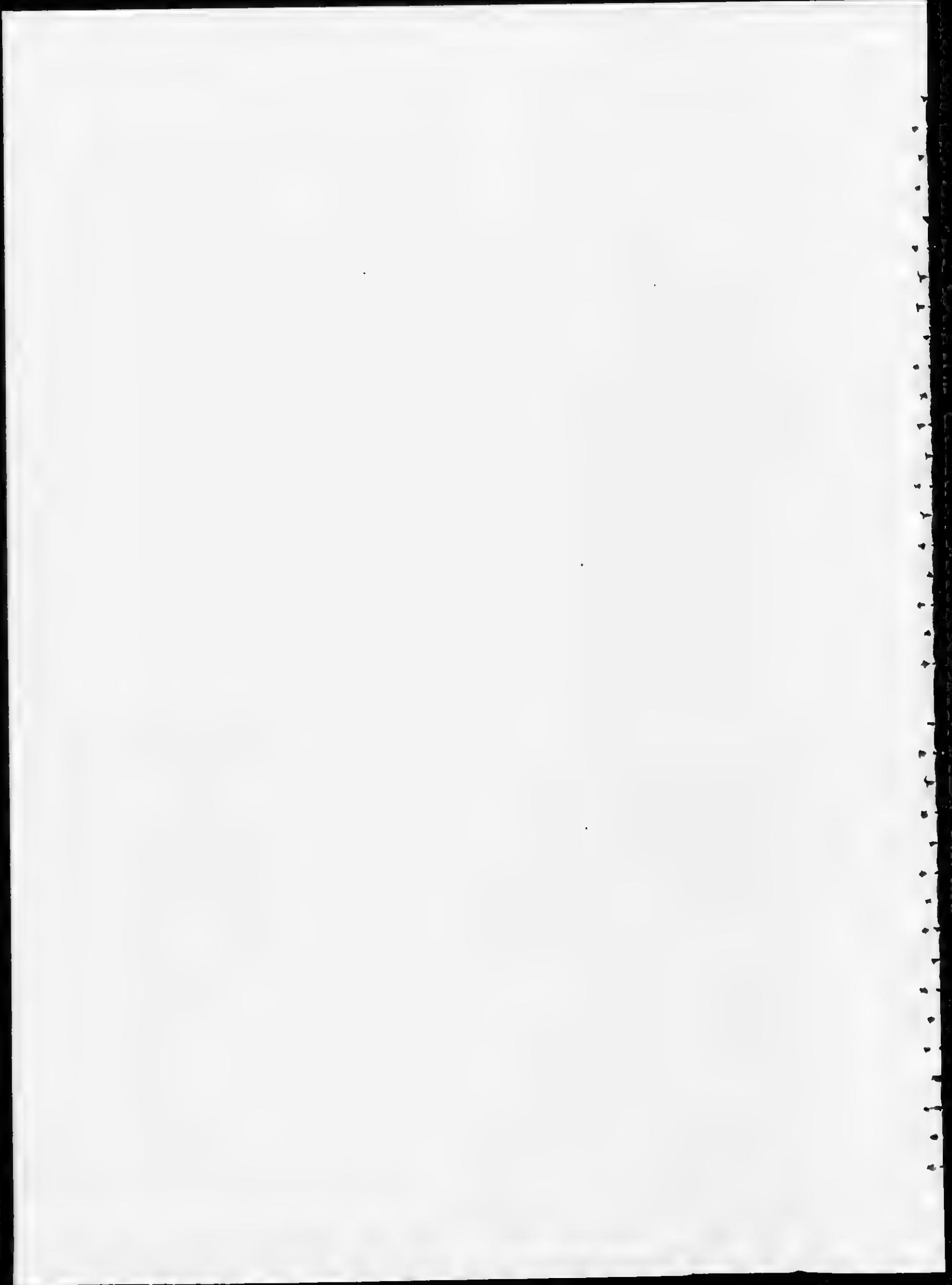
TABLE OF CITATIONS

Cases:	Page
<u>Atlantic Seaboard Corp. v. F.P.C.</u> , <u>AppDC</u> , 404 F. 2d 1268 (1968) -----	3
<u>Citizens for Allegan County, Inc. v. F.P.C.</u> , CADC No. 21842 (unreported order, May 17, 1968) -----	35
<u>Columbia Gulf Transmission Co.</u> , 37 FPC 118 (1967) affirmed <u>sub nom.</u> <u>Atlantic Seaboard Corp. v. F.P.C.</u> , 397 F. 2d 753 (CA4, 1968) -----	3, 21
<u>Community Broadcasting Co. v. F.C.C.</u> , 107 AppDC 95, 274 F. 2d 753 (1960) -----	30
* <u>F.P.C. v. Hunt</u> , 376 U.S. 515 (1964) -----	33
<u>Hamilton, City of</u> , 37 FPC 209 (1967), affirmed <u>sub nom. Cincinnati Gas & Electric Co. v. F.P.C.</u> , 389 F. 2d 272 (CA6), certiorari denied, 393 U.S. 826 (1968) -----	21
<u>Home Gas Co.</u> , 40 FPC 1008 (1968) -----	3
<u>Home Gas Co. v. F.P.C.</u> , 97 AppDC 300, 231 F. 2d 253, certiorari denied, 352 U.S. 831 (1956) -----	21
* <u>Public Service Commission of New York v. F.P.C.</u> , 117 AppDC 195, 327 F. 2d 893 (1964) -----	38-39
* <u>United Gas Pipe Line Co. v. F.P.C.</u> , 385 U.S. 83 (1966)	38
<u>United Gas Pipe Line Co. v. Mobile Gas Service Corp.</u> , 350 U.S. 332 (1956) -----	33
<u>United States v. El Paso Natural Gas Co.</u> , 376 U.S. 376 U.S. 651 (1964) -----	21

*

Cases or authorities chiefly relied upon are
marked by asterisks

Statutes and Regulations:	Page
Federal Power Act, Act of June 10, 1920 41 Stat. 1083, as amended, 16 U.S.C. 791a-825r, Section 203, 16 U.S.C. 824(b) -----	35
 Federal Power Commission Regulations under the Natural Gas Act :	
Section 154.64, 18 C.F.R. 154.64 -----	36,37
Section 250.2, 18 C.F. R. 250.2 -----	37
Section 240.2, 18 C.F.R. 250.3 -----	37
Natural Gas Act, June 21, 1928, c. 556, 52 Stat. 821-822, as amended, 15 U.S.C. 717-717w -----	20,22,35-38
Section 4, 15 U.S.C. 717c -----	33,35
Section 4(d), 15 U.S.C. 717c(d) -----	36
Section 7, 15 U.S.C. 717f -----	11,12
Section 7(b), 15 U.S.C. 717f(b) -----	38
Section 7(c), 15 U.S.C. 717f(c) -----	1,13,15,18- 20,30,37
Section 7(e), 15 U.S.C. 717f(e) -----	20
Section 16, 15 U.S.C. 717o -----	37,38



IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23051

Pennsylvania Gas and Water Company, Petitioner

v.

Federal Power Commission, Respondent

Manufacturers Light and Heat Company
and Home Gas Company, Intervenors

On Petition to Review an Order
of the Federal Power Commission

BRIEF FOR THE FEDERAL POWER COMMISSION

COUNTERSTATEMENT OF THE ISSUES PRESENTED

1. Whether the temporary certificate provisions of Section 7(c) of the Natural Gas Act may be used to provide needed additional gas supplies to an existing customer of a pipeline where final action on the permanent certificate required to make such a sale on an annual basis cannot be completed prior to the time the gas will initially be needed.

2. Whether the Commission's grant of a temporary certificate allowing two affiliated pipelines to operate as a single coordinated entity, subject to conditions under which the status quo ante would be restored if final action on the application led to rejection of the coordinated operation, was a reasonable emergency solution.

COUNTERSTATEMENT OF THE CASE

This case arises from the challenge by petitioner, Pennsylvania Gas and Water Company (Penn Gas), of the grant by the Commission of a temporary certificate permitting the coordinated operation of Manufacturers Light and Heat Company (Manufacturers) and Home Gas Company (Home), two subsidiaries of the Columbia Gas System. The petitioner is a distributor of gas in certain areas of Pennsylvania, and purchases a portion of its gas requirements from Manufacturers. The temporary was issued on March 17, 1969 (R. 490-491). Rehearing was denied by order of May 16, 1969 (R. 538-544).

Manufacturers sells gas at wholesale to a number of distribution companies in Pennsylvania, Ohio, and West Virginia, and to its pipeline affiliate, Home. Home

operates a pipeline in New York State and its customers include Orange and Rockland Utilities, Inc. (Rockland) and Central Hudson Gas and Electric Corporation (Central Hudson), two distribution utilities in New York State, which are Home's largest non-affiliated customers. For about ten years before this case arose, both Rockland and Central Hudson purchased gas from Home at a load factor of approximately 40 percent (R. 181).^{1/} Their purchases were substantially lower in the summer than in the winter. By the time Home in 1968 requested Commission approval of the settlement of rate cases substantially reducing its applicable rates (particularly the commodity component of the two-part, contract demand rate) and removing restrictions on boiler fuel use,^{2/} Rockland and Central Hudson had indicated their

1/ Load factor may be defined as the ratio of average daily volumes delivered to the contract demand, i.e., the daily volume which the seller is contractually obligated to deliver.

2/ The settlement was approved in Home Gas Company, 40 FPC 1008 (1968). It reduced the commodity rate for contract demand service from 34.5 to 31 cents. The restructured tariff approved by this settlement, along with similar restructured tariffs approved for other Columbia companies, had the effect of making their rates more competitive with those of other pipelines. For a discussion of the non-competitiveness of the prior rates see Atlantic Seaboard Corp. v. F.P.C., ___ AppDC ___, 404 F. 2d 1268 (1968); Atlantic Seaboard Corp. v. F.P.C., 397 F. 2d 753 (CA4, 1968).

intention to increase substantially their off-peak purchases so that their purchases from Home, in the future, would be close to 100 percent load factor (R. 182, 358-364).

This meant that once the Commission approved Home's restructured tariff Home would be under an obligation to supply the additional gas needed to Rockland and Central Hudson pursuant to its previously certificated contract obligations. Rockland and Central Hudson indicated their purchases would increase by about 6,600,000 Mcf annually (R. 184). Home, however, had been purchasing its full contract demand from Manufacturers year round, ^{3/} i.e., at a load factor of 100 percent (R. 183, fn. 2). Accordingly, while Manufacturers had an obligation under its tariff (R. 159) to use due diligence to supply the increased needs to Home, fulfillment of Home's obligation to Rockland and Central Hudson would require certificate approval from the Commission.

3/ This arrangement permitted the most efficient use of facilities (as between Manufacturers and Home) under the historical pattern of Rockland-Central Hudson purchases.

To accomplish this, Home and Manufacturers filed, on June 20, 1968, a joint application for a certificate of public convenience and necessity permitting them to operate together on a coordinated basis to serve the increased needs of Rockland and Central Hudson. The application stated that non-coordinated operation, i.e., the continued operation of the affiliated companies as completely separate entities, would have serious deficiencies as a means of serving these loads (R. 183-186). Because Home was already taking gas from Manufacturers at a 100 percent load factor Home's increased needs under separate operation would, it was asserted, require Home to increase its contract demand from Manufacturers from 78,200 to 94,500 Mcf per day (R. 184, 385) and Manufacturers would in turn have to increase its contract demand from its supplier, United Fuel Gas (R. 183, 185, 367-370), by 11,000 Mcf per day and would have to build a 10.1 mile loop in its system, at an estimated cost of \$1,310,000 (R. 185, 374-375). The application explained that such construction would be unnecessary if Home and Manufacturers were permitted to function as a single unit for operational and ratemaking purposes, for while

4/
Manufacturers had an ample valley^{4/} in its purchases from United Fuel to meet the increase in the annual requirements of Rockland and Central Hudson, this gas could be used for this purpose only if Manufacturers had Home's storage available to it (R. 183-184).

It was also stated that while Home's contract demand associated with its purchases from Manufacturers would have to be increased under continued non-coordinated operations, its customers would, on the other hand, not increase their contract demands with Home, but merely fill up their valley requirements by taking gas up to the 100 percent load factor level to which they were already entitled. Consequently, Central Hudson and Rockland would incrementally pay only the 30.98 cent commodity charge for the additional gas under existing rate schedules (there being no additional demand involved). But to obtain this gas under non-coordinated operations Home

4/ In this context, "valley" means the summertime reduction intakes below 100 percent load factor.

would be required to pay Manufacturers for additional demand as well as additional volumes of gas, or a minimum of 39.86 cents per Mcf (the combined demand and commodity charges at 100 percent load factor). Viewing Home separately this would result in a loss of 8.88 cents per Mcf (R. 436-437) or more than \$586,000 on the total additional volumes of 6,604,100 Mcf per year.

Accordingly, Manufacturers and Home presented as their proposed solution to the supply problem a plan for coordinated operation of the two companies. The coordination plan was summarized in the application (R. 180-181) as follows:

* * * [T]he present service agreement between Manufacturers and Home would be cancelled, Manufacturers would discontinue the separate billing of interstate gas to Home and the market requirements of the customers of Manufacturers and Home would be furnished in a manner which would utilize most effectively the interstate pipeline and storage facilities of Manufacturers and Home to the maximum advantage of both companies. Jurisdictional sales hereafter by Manufacturers and Home would be made under a joint FPC gas tariff containing the provisions set forth in Exhibit P [R. 270-340]. The joint tariff would supersede and cancel the FPC gas tariffs of Manufacturers and Home currently in effect. This proposal thus contemplates that Manufacturers and Home would operate as a single unit for all FPC regulatory and ratemaking purposes. * * *

The proposed joint tariff referred to retained the same rates as proposed in the individual companies' then-pending rate settlements, with two rate zones: one for Manufacturers' customers at Manufacturers' rates, and the other for Home's customers at Home's rates. But the tariff also included a proposed minimum commodity obligation requiring customers to pay for minimum amounts of gas, even if not taken. No such provision had previously been applied by either Manufacturers or Home.

The Commission published notice of the application on July 3, 1968 (R. 386-387). Several petitions to intervene followed, including that of Penn Gas (R. 394-401).

On October 8, 1968, the Commission approved the ^{5/} rate settlement proposed by Home, referred to above, and on October 10, Manufacturers and Home filed their application for the temporary certificate here in issue (R. 432-443). In this application Manufacturers and

5/ Since that time, Home and Manufacturers have requested rate increases, now pending in Docket Nos. RP69-16, RP69-17, RP69-32, and RP69-33 (R. 541). The rates proposed in Docket Nos. RP69-16 and RP69-17 became effective subject to refund in part on May 15, 1969, and in part on July 10. The RP69-32 and RP69-33 increases will become effective subject to refund on November 1, 1969.

Home reiterated many of their earlier statements relating to the application for a permanent certificate and emphasized that the coordinated operation proposal would not involve the construction of any new facilities (unlike the alternative of securing new contract demand from Manufacturers). The application further stated that the 10.1 mile loop of pipeline required if the coordination plan were rejected could not be built by November 1, 1968, which in the applicants' view was the date on which it would be needed. Finally, Manufacturers and Home, in order to avoid prejudice to any other parties while the proceedings on the permanent certificate were in progress, undertook (R. 439-440):

* * * to maintain separately on their books the revenue received, property accounts and operating expenses. The books of the companies will also reflect all deliveries of gas between Manufacturers and Home, together with such other records as may be required for appropriate analysis of the individual operations of Home and Manufacturers within the coordinated operations proposed in this proceeding. * * *

The applicants also agreed to suspend for the duration of the temporary certificate the proposed minimum bill provision, which had drawn objections from several parties, including Penn Gas, in connection with the permanent certificate application.

On October 22, Penn Gas filed an opposition (R. 444-460) to the grant of a temporary certificate, arguing that no emergency existed since the increased needs of Rockland and Central Hudson were foreseeable at the time Home agreed to settle its rates and since valley gas from Manufacturers was physically available to supply their needs, possibly under some form of new off-peak rate schedule. It also asserted that the temporary certificate procedure could not be used to "abrogate" tariffs and service agreements under which Manufacturers sold gas to Home, and each of them to their respective customers; and that Penn Gas would allegedly be injured by the shifting of Home's higher costs to Manufacturers' customers. The opposition also alleged that the prejudice to Penn Gas was immediate, and not cured by the "mere bookkeeping" arrangements proposed by Manufacturers and Home to avoid prejudice to their customers. Rockland and Central Hudson filed statements (R. 464-470) in support of the coordinated-operation proposal.

In an answer to Penn Gas' objections, Manufacturers and Home stated (R. 475) that the alternatives to coordinated operation would also involve Commission authorization and, possibly, opposition by Penn Gas or other

parties. They noted further that under coordinated operation there would be no necessity for new service agreements with customers; the only change in existing contracts would be the temporary suspension of the Manufacturers-Home service agreement for the duration ^{6/} of the temporary certificate (R. 476).

On March 17, 1969, the Commission, finding that an emergency existed within the meaning of Section 7 of the Natural Gas Act, issued a letter order granting a conditioned temporary certificate for the coordinated operation ^{7/} of Home and Manufacturers (R. 490-491). It

6/ This response also pointed out that Penn Gas was the sole objector to the coordination plan, that Penn Gas' purchases from Manufacturers were sharply declining (R. 477-478), and that Penn Gas' evident intention was to transfer as much of its business as possible to another supplier, if it could obtain Commission approval. Penn Gas has pending, in Docket No. CP69-100, an application for authorization to take from Transcontinental Gas Pipe Line Corporation 23,845 Mcf per day, representing by far the greater part of its present purchases from Manufacturers, although its 18-year service agreement with Manufacturers, effective on November 1, 1967, still has 16 years to run (R. 175).

7/ Concurrently, it issued an order permitting intervention by the various parties seeking to intervene, and setting the matter for hearing on the question of a permanent certificate (R. 492-495). A prehearing conference was held on May 1, 1969. As of the time of writing, the hearing before the examiner has been almost completed.

included conditions designed to protect the customers of Manufacturers and Home:

* * * that (1) the companies maintain their books and records in such a manner that in the event the Commission denies the companies a permanent certificate Manufacturers and Home may resume individual operations; (2) the companies will bill their respective customers at each company's filed rates, including rates subject to refund at Dockets Nos. RP69-16 and RP69-17 upon their effectiveness, and will not impose any minimum annual commodity bill against any customer; and (3) the granting of this temporary certificate will have no effect on the jurisdiction of the Securities and Exchange Commission to consider the issue of the retainability of Home Gas Company as part of the integrated natural gas system of The Columbia Gas System, Inc. * * *

The Commission further ordered that the grant of the temporary certificate was to be "without prejudice to such final disposition of the application for certificate as the record may require."^{8/}

Manufacturers and Home commenced coordinated operations, effective March 18, and suspended their service agreement pending the outcome of the permanent certificate proceeding (R. 496).

8/ Commissioner Bagge did not participate in the issuance of the temporary certificate or in the order denying rehearing.

On April 16, 1969, Penn Gas applied for rehearing of the order granting the temporary and a stay of its effectiveness (R. 503-515). It repeated its contentions that there was no emergency, that the Commission had exceeded its Section 7(c) authority and allowed the improper change or cancellation of existing rates, and that it was prejudiced by unduly favorable treatment of Home. It also insisted that the coordinated operation plan was not necessary to permit Home to serve its customers, that a hearing should have been held, and that the Commission's action lacked substantial evidentiary support and proper findings, was arbitrary and capricious and denied Penn Gas due process of law. In support of its motion for a stay,^{9/} Penn Gas contended that the harm to it was "immediate and irreparable" and that the conditions imposed in the temporary certificate would not accomplish their objective of protecting customers of Home and Manufacturers.

9/ Penn Gas has not sought a stay of the Commission's order in this Court.

On May 16, 1969, the Commission issued an order
10/
denying rehearing and the requested stay (R. 538-544).

The Commission pointed out that Penn Gas' principal objection -- the alleged failure to protect Manufacturers' customers against harm for the period the temporary certificate was in effect -- was negated by the conditions contained therein. In this respect, the Commission concluded that, contrary to Penn Gas' assertions, all the information necessary to regulate the companies on an individual basis would be preserved in (or would be derivable from) the records they had been required to keep for the interim period (R. 540-541). In these circumstances, the Commission concluded that there were no changes in rates or contracts detrimental to any party, and that Penn Gas had failed to show any irreparable hurt (R. 542). The Commission also reiterated its view that an emergency existed, noting that Home's customers were contractually entitled to the substantial annual amount of gas that could not be delivered without additional certificate approval of some type.

The petition for review followed.

10/ Page R. 544 is an errata sheet correcting typographical errors in the original order. Where parts of the order affected by it are quoted in this brief, they will be quoted with the corrections incorporated without citation of the errata notice.

ARGUMENT

I. THE COMMISSION WAS FULLY WARRANTED IN CONCLUDING THAT AN EMERGENCY EXISTED WITHIN THE MEANING OF SECTION 7(C) OF THE GAS ACT PERMITTING THE ISSUANCE OF A TEMPORARY CERTIFICATE

Under Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), infra, pp. 40-41, natural gas companies must obtain a certificate of public convenience and necessity prior to the construction of new facilities or the initiation of new services. While such a certificate may be granted permanently only after a hearing with the participation of interested persons, Section 7(c) also permits the Commission to "issue a temporary certificate in cases of emergency, to assure the maintenance of adequate service or to serve particular customers * * *." The Commission properly concluded that an emergency existed here warranting the issuance of temporary authorization for the coordinated operations by Manufacturers and Home sought to be permanently certificated.

The need for temporary authorization developed when Home's tariff was restructured, with Commission approval, to make its rates and services more competitive with those

of other pipelines serving its market. Two of its customers, Rockland and Central Hudson, who had long been purchasing gas at a low load factor, elected to purchase much larger volumes of off-peak gas than they had for the prior ten years. Rockland and Central Hudson were, under their contracts, entitled to receive such additional gas without any new certificate authorization to Home. Manufacturers, the sole supplier of Home, had an obligation to use "due diligence" to provide any increased contract demands of its customers, including Home. But since Manufacturers was selling to Home at 100 percent load factor at the contract demand authorized by the Commission, the furnishing of any additional firm supplies of gas by Manufacturers for Home's customers required some new certificate authorization, regardless of which of several alternatives for supplying the additional gas might be adopted.

Manufacturers and Home proposed to deal with the new situation caused by the major change in the purchasing pattern of Home's principal customers by coordinating their operations (i.e., to operate as a single company for rate purposes) so as to make what they deemed to be the best utilization of their combined transmission and storage

facilities, as well as available gas supplies. While they recognize they could continue to operate as two entirely separate entities for rate purposes under existing schedules, this would not only require approval of additional contract demand service by Manufacturers to Home but also require approval for the construction of new facilities costing about \$1.3 million that the Columbia companies believe are unnecessary. Penn Gas' suggestion that existing facilities might also have been used by adding some type of off-peak service to Manufacturers' tariff would also have required certificate approval.

By the time the Commission approved Home's new rates in October 1968, it was apparent that the Manufacturers-Home proposal to coordinate operations could not be finally approved without a full hearing, particularly in view of Penn Gas' opposition. Moreover, the alternative of adding contract demand could hardly have received early approval in view of the allegations that the related construction was unnecessary and any new service would similarly have had to have been subjected to considerable scrutiny.

In March 1969, when the Commission granted temporary authorization for coordinated operations, it was clear that additional gas was required by Manufacturers and Home to meet the needs of existing customers before the Commission could complete consideration of the permanent certificate application. In these circumstances, the type of emergency contemplated by temporary certificate provisions of Section 7(c) of the Act was present, since the gas was needed "to assure maintenance of adequate service or to serve particular customers."

In claiming that there was no emergency calling for temporary authorization Penn Gas has confused the consequences of one means of dealing with the emergency (*i.e.*, additional contract demand) with the emergency itself. It has assumed that because Home and Manufacturers represented that coordination would prevent a substantial loss to Home, the emergency consisted only in the possibility of such losses. In fact, as the Commission recognized, the emergency lay in Home's (and Manufacturers') inability to meet their obligations under existing certificated arrangements.

Penn Gas also objects that, because the emergency resulted from a rate reduction which Home was aware would invite larger purchases by Rockland and Central Hudson, it was foreseeable and hence no emergency existed at all. This suggests that Home and Manufacturers could have avoided the necessity of requesting coordinated operations had Home delayed reducing its rates to a level competitive with other gas suppliers and with competing fuels until the supply problems which might be expected to result from this action (assuming they could be predicted with sufficient accuracy) could be resolved, after hearing, in certificate proceedings. It would indeed be strange if a result patently contrary to the interests of the consuming public were compelled by the language of the Act. But it is not. There is nothing in the relevant language of Section 7(c) that says the triggering emergency must have been unforeseen or unforeseeable or that it could not be brought on by the voluntary action, inter alia, of the applicant. There might, in other situations, be circumstances making the granting of the temporary authorization unwise, inappropriate, or even contrary to the basic public interest.

standard which controls the Commission's action under Section 7(c) and (e) of the Act. The Commission need not grant temporary authorization merely because there is an emergency within the meaning of Section 7(c). But likewise it need not refuse a grant of temporary authorization otherwise required by the public convenience and necessity, merely because the emergency, though real, had foreseeable antecedents.

There can be no doubt in the present case that Home's actions which led to the emergency were fully consonant with the basic objectives of the Act and by no means merely a device artificially to create an emergency. Home candidly stated that its relatively uninspiring performance in its market area was the result of an uncompetitive rate level, and that it had been pressed in the past by its customers to rectify the situation (R. 479-480).

Competition for loads, of course, is of public benefit, and the general policy of the Natural Gas Act in favor of low rates is furthered if a supplier with uncompetitive rates can reduce them to a competitive

level. United States v. El Paso Natural Gas Co., 376 U.S. 651 (1964); Atlantic Seaboard Corp. v. F.P.C., 397 F. 2d 753 (CA4, 1968). Larger sales, such as may be generated by more competitive rates, in turn result in better use of facilities^{11/} and lower unit costs to the consumer.

In the past, the Commission has found that the high rates of certain Columbia System subsidiaries made appropriate the certification of other suppliers in their market areas in order to secure available savings to the consumer. Columbia Gulf Transmission Co., 37 FPC 118 (1967), affirmed sub nom. Atlantic Seaboard Corp. v. F.P.C., 397 F. 2d 753 (CA4, 1968); City of Hamilton, Ohio, 37 FPC 209 (1967), affirmed sub nom. Cincinnati Gas & Electric Co. v. F.P.C., 389 F. 2d 272 (CA6), certiorari denied, 393 U.S. 826 (1968); Home Gas Co. v. F.P.C., 97 AppDC 300, 231 F. 2d 253, certiorari denied,
352 U.S. 831 (1956).^{12/} The same policy objectives are

11/ The present case is a particularly good illustration of this fact, since the additional 6,600,000 Mcf to be purchased by Rockland and Central would be supplied through Home's existing system. And if the Columbia Companies are correct, under coordinated operations the additional deliveries would also permit more economic utilization of Manufacturers' facilities.

12/ In this case Rockland and Central Hudson were authorized to receive gas from a supplier other than Home.

served by approving, as the Commission did in the earlier rate cases, rate reductions by the high-cost supplier. To forego these savings in the interest of avoiding a difficult, though soluble, supply problem would be to stand the policy of the Act on its head.

The same inability to perceive the nature of the emergency facing Home and Manufacturers is apparent in petitioner's argument that, because no action was taken, or, apparently, asked for, to enable coordinated operations to begin on November 1, 1968, there was no gas supply emergency at all. True, the Commission did not necessarily take literally the applicants' statement that "[l]ack of permanent authorization of coordinated operations by November 1, 1968, therefore places Home and Manufacturers in an emergency situation on that date." (R. 474). As petitioner observes (Br. p. 20), most of the additional gas involved was for use in the summer months. This fact, however, is far from establishing that there was no emergency at the time the temporary was issued in March 1969, near the end of the winter heating season. Home was under a binding contractual obligation to deliver the additional gas to its customers,

and absent Commission authorization would have been unable to do in the summer months, when most of the additional gas was to be taken, since Home was already purchasing its full contractual and certificated supplies year round. The fact that the Commission waited a few months to act on the request for a temporary certificate does not show that there was no emergency; it shows, if anything, merely that the Commission realized that the emergency would not arise during the 1968-1969 heating season.^{13/} Petitioner's attempt to imply that the Commission found that an emergency existed on November 1, 1968 (Br. pp. 20-21) is completely without foundation. The Commission's temporary certificate order of March 17, 1969 (R. 490-491) simply states that "an emergency exists within the meaning of Section 7 of the Natural Gas Act" (R. 490).

Neither is there any basis for petitioner's assertion (Br. pp. 21-22) that the Commission in denying rehearing conceded that there was no emergency and shifted

13/ Presumably petitioner is not suggesting that the Commission should not have taken the available time necessary to evaluate its arguments.

the ground of its approval to consistency with the public convenience and necessity. The Commission not only explained the nature of the emergency but expressly stated (R. 542), that "we think that the emergency responded to by the Commission was an evident one."^{14/} Of course, the Commission also stressed the public interest aspects of its action. If it had not, its failure to do so would doubtless have been urged as error.

14/ As a consequence, Penn Gas' further contention (Br. pp. 29-30) that the orders were "not supported by substantial evidence" also fails. For this argument is no more than a repetition of the contention that (a) there was no emergency on November 1, 1968, and (b) that the Commission abandoned its reliance on the emergency as a basis for the temporary certificate. Since nothing turned on the nature of the situation as of November 1, 1968, and, as has been shown, the Commission continued, in its order on rehearing, to base its action on the existence of a supply emergency, this contention is clearly without merit.

II. THE COMMISSION'S TEMPORARY CERTIFICATION OF COORDINATED OPERATION BY MANUFACTURERS AND HOME WAS REASONABLE

As we have seen, temporary certification of some type by the Commission was required to permit Home and Manufacturers to meet the gas supply requirements of their existing customers. While the coordinated operations proposed by Manufacturers and Home may not have been the only solution available, the temporary approval thereof was eminently reasonable and was, as we show below, without prejudice to the interests of Penn Gas ^{15/} or any other interested person.

Temporary action which, as a practical as well as a legal matter, leaves to the Commission in its resolution of the permanent certificate application all the options it would have had if no temporary action had been necessary to deal with the emergency is plainly preferable to temporary action that might, as a practical matter, eliminate future options. In the present case, temporary relief might have been afforded by increasing Home's contract demand service from Manufacturers.

15/ Since Penn Gas has made no showing of injury resulting from the grant of the temporary certificate (and, for reasons set out below, is not in fact injured), it is not aggrieved by the Commission's order. Accordingly, we believe that it would be appropriate for the Court to dismiss its petition for review.

According to the Columbia companies that solution would have resulted in capital costs of about \$1.3 million, and related annual costs (return and taxes thereon among others), that could be avoided by use of the available facilities and gas supplies through coordinated opera-
16/
tions.

On the other hand, the coordinated operation plan accepted by the Commission did not involve the construction of any new facilities. While the operation of the Manufacturers-Home service agreement and the related rate schedules are temporarily suspended, the Commission correctly concluded that this benefit to the two companies results in no injury to Penn Gas. Whether or not such operations if permanently certificated could result in higher rates for Penn Gas in the future, no increase for the interim period has been predicated on any change in operations. Moreover, the Commission took pains to insure that, if in the proceeding on permanent certification the public convenience and necessity were found

16/ Additional contract demand purchases by Home (which would have cost 39.86 cents at 100 percent load factor) would also have resulted in Home paying about nine cents more for the additional gas supplied to Rockland and Central Hudson than those companies are required to pay for such supplies.

so to require, Manufacturers and Home could be restored to their respective positions as individually-regulated companies. This was the purpose of the conditions inserted in the March 17 temporary certificate order (R. 490). Thus, if an arrangement different from the one temporarily authorized were found appropriate (such as an off-peak rate schedule, or some other revision of Manufacturers' rates), the existence of coordinated operations during the term of the temporary certificate could in no way interfere with its adoption.

As the Commission explained in its order denying rehearing (R. 540-541):

By the attachment of these conditions, in addition to the general language set forth above, we contemplated that the elimination of the sales relationship between Manufacturers and Home during the term of temporary authorization, would permit these affiliates of Columbia System to make the additional sales to Rockland and Central Hudson -- without disrupting the Commission's regulation of them on an individual company basis -- pending final resolution of the propriety of the arrangement. * * * [T]he Applicants have repeatedly stated in their pleadings herein that they will have available all the data necessary for ratemaking purposes, covering the term of the temporary certificate if required.

The only statistic, as the Commission also noted, which might not be recorded as such was Home's contract demand volume but that can be easily calculated from available data of deliveries by Manufacturers to Home (R. 541), which would be recorded, as Manufacturers and Home proposed in their application (R. 439). In these circumstances, it will be possible, should the Commission determine after hearing^{17/} that the coordinated operations should not be permitted to continue, to unravel the transactions that had occurred under the temporary certificate and, if appropriate, institute a new arrangement. There is, therefore, no danger that adequate regulation of the rates and services of Home and Manufacturers will lapse as a result of the temporary authorization.^{18/}

17/ The hearing ordered on the permanent certificate (R. 492-495) is presently in progress, with Penn Gas participating as an intervenor.

18/ It is noteworthy that Penn Gas, while attacking the temporary authorization from virtually every conceivable angle, does not argue in its brief that the protective conditions were inadequate to accomplish their objective.

Petitioner contends, however, that the existence of the temporary authorization prejudices it in the proceeding, now in progress, to determine whether coordinated operations should be permanently certificated. In particular, it complains that in the order denying rehearing the Commission expressly concluded that the temporary authorization was consistent with "public convenience and necessity". In granting a temporary authorization to relieve an emergency the Commission necessarily selected the temporary alternative which appeared, on the basis of the allegations before it, most consistent with the public convenience and necessity and best adapted to give the Commission adequate freedom to determine later, on the full record, what permanent solution the public convenience and necessity require. To say that any finding that its temporary authorization was required by the public convenience and necessity prejudges its future proceedings on the permanent certificate is to say that there can be no temporary certificate issued in a contested case or that the Commission need not consider (at least expressly) public interest questions in issuing such a certificate.

It would be an odd construction of Section 7(c) to hold that the Commission must studiously ignore its basic standard when taking temporary measures under it. But, since what might appear to be in the public interest on the basis of the pleadings as a temporary expedient, will not necessarily be that which the evidentiary record demonstrates is required as a permanent solution to the question, a finding in the first instance cannot serve to outweigh record evidence in the second. Additionally, an important element of public interest in the consideration of temporary action is to design any such action to leave open all potential alternatives in the consideration of the permanent certificate application.

It is apparent that this is not the type of case in which the existence of a temporary certificate has significant potential effect on the outcome of the permanent certification proceeding. In the first place, there is here no possibility, such as was present in cases like Community Broadcasting Co. v. F.C.C., 107 AppDC 95, 274 F. 2d 753 (1960), that investment in facilities, undertaken on the strength of the temporary authorization, might influence the Commission in favor of permanent certification of the project in order to avoid waste

of the applicants' money and the resulting burden on their customers. On the contrary, as the Commission noted, a basic feature of the coordination plan as a temporary expedient was that it did not require the construction of any new facilities (R. 542). There is also no change in existing rates to any non-affiliated customer resulting from the temporary authorization, and the books and records of the applicants permit them to be restored to their original, pre-coordination regulatory position.

Accordingly, Penn Gas is fully protected against possible adverse consequences of the temporary authorization.

Petitioner states (Br. pp. 7, fn. 6 and 23, fn. 15) that the suspension of Manufacturers' service agreement with Home would result in lost revenues to Manufacturers of over \$10 million, allegedly to the detriment of Manufacturers' remaining customers. While Home will not make payments to Manufacturers under terms of the suspended service agreement, any rate determination whether for the term of the temporary certificate only (if it is subsequently determined that coordinated operations should not continue) or for the future will necessarily allocate appropriate costs to the gas used for Home's customers. The protective conditions included in the

temporary are designed to permit this either in the pending Manufacturers and Home rate cases, or in the permanent certificate proceeding. The contention that the temporary certificate inflicts on Manufacturers a revenue loss that will have to be made up by its other customers is therefore without foundation. For, as we have shown, there is nothing to indicate that the temporary is likely to influence the Commission, simply by its existence, in the decision respecting the permanent certificate.

III. ISSUANCE OF THE TEMPORARY CERTIFICATE WAS NOT INVALID BECAUSE MANUFACTURERS' RATES TO HOME WERE SUSPENDED

Petitioner argues at some length (Br. pp. 23-28) that the temporary certificate was invalid because Manufacturers' rates to Home and their service agreement were suspended^{19/} without formal compliance with the rate

^{19/} Petitioner's assertion (Br. p. 23, fn. 15) that the Manufacturers-Home service agreement has been "cancelled" is baseless. As the Commission pointed out (R. 541), the parties were proposing not a cancellation but an "interim suspension" of the service agreement. The applicants made the same statement in their letter to the Commission of March 28, 1969 (R. 496) and in their opposition to petitioner's request for a stay (R. 533), where they stated that if the Commission denied the permanent certificate, service to Home would be resumed under the then effective rate schedule. The service agreement, in other words, would retroactively come back into force, if separate operation of the companies is held to be more appropriate than coordinated operation.

change provision of Section 4 of the Gas Act. This claim is also without merit.

There is no basis for Penn Gas' broad assertion that the Commission, in issuing temporary or permanent certificates for a new type of service or operation, is restricted to authorizing such service on the basis of existing rates or service agreements. To the contrary, the Commission has the clearly recognized power to impose reasonable rate conditions on temporary certificates as well as permanent certificates. See F.P.C. v. Hunt, 376 U.S. 515 (1964). The rate modifications authorized by the temporary certificate order here were plainly reasonable. As the Commission pointed out (R. 541),
20/ except "for the interim suspension of their service agreement, the Applicants have no authority under the temporary to make any changes to their separate tariffs and rate schedules on file with the Commission * * *."

20/ There is no contractual problem within the meaning of United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956), since Home and Manufacturers agreed to the modification.

The rates Manufacturers and Home charged their customers, including Penn Gas which buys from Manufacturers, were the same as they were before issuance of the temporary. And so far as the Manufacturers-Home transaction itself is concerned, it will be possible, for reasons explained above (pp. 11-12, 27-28), to restore these companies to their pre-coordination status if necessary.

The reasonableness of the Commission's action in dealing with rate matters in the context of a temporary certificate seems particularly clear where, as here, notice of the proposed "rate change" was given long before the change was authorized pendente lite by the Commission and the change was essentially formal (i.e., the suspension of a service agreement between two companies which, for the period of the temporary at least, will be for practical purposes a single entity). As we have noted, the temporary did not authorize any changes in rates charged to the other customers, and the Commission has insured, by protective conditions, that coordinated operations under the temporary certificate by Manufacturers and Home will not interfere either with the restoration of the status quo ante or with the institution of a new arrangement should coordinated opera-

tions be found wanting in the permanent certificate proceeding. Consequently, there can be no damage to Penn Gas or any other customer from the suspension of the service agreement.

It should also be recognized that permitting rate changes to become effective prior to a hearing, but subject to protective conditions, is fully consonant with the scheme of the Gas Act. Indeed, the rate suspension and refund provisions of Section 4 of the Natural Gas Act embody it. A rate change when proposed may, depending on the exercise of Commission discretion, be put into effect with or without the requirements of refunds to protect customers should the rate change be found unjustified following a hearing and decision on the record.

21/

21/ Temporary protective conditions are also used in the case of corporate acquisitions, to allow a merger to be entered into, subject to later unscrambling, while the legality of the acquisition is investigated in a plenary proceeding. For example, in an acquisition case under Section 203 of the Federal Power Act, this Court denied a requested stay of the acquisition on condition that the parties maintain themselves in a position to undo the merger if necessary. Citizens for Allegan County, Inc. v. F.P.C., CADC No. 21842 (unreported order, May 17, 1968).

While Section 4(d) of the Gas Act, infra, p. 40, does not permit a natural gas company to effect a rate change except upon thirty days' notice, the provision also expressly permits the Commission to curtail the notice period in a given case. And even if the Commission chooses to suspend the rate change and allow it to become effective subject to refund, a one-day suspension has sometimes been used.

In this connection we note petitioner's suggestion (Br. p. 25) that the alleged "cancellation" of the Manufacturers-Home service agreement was faulty in that it did not comply with the notice requirements of the Act and the Commission's regulations (see 18 C.F.R. 154.64). While a rate change notice separate from the certificate application was not required in view of the Commission's authority to take necessary rate action in dealing with certificate matters, it is clear that the notice in fact given all parties to the proceeding was ample. The application for the permanent certificate had been on record since June of 1968, and the temporary certificate application antedated by several months the issuance of the temporary authorization. It contained

a full explanation of the nature of and need for the arrangement certificated. It is quite clear that the applicable regulations regarding cancellation of rates require no more -- indeed somewhat less -- information than Home and Manufacturers supplied. See 18 C.F.R. 154.64, 250.2, 250.3, infra, pp. 43-45. Once again, there is no possibility of prejudice to petitioner or any other party.

While there is ample justification under Section 7(c) for the steps the Commission took, it is equally clear that Section 16 of the Act (15 U.S.C. 717o) would also authorize the temporary suspension of the service agreement. Section 16 allows the Commission to "perform any and all acts, and to * * * issue * * * such orders * * * as it may find necessary or appropriate to carry out the provisions of this act." The Commission found that there was a gas supply emergency requiring the grant of temporary authority to Manufacturers and Home to take remedial action, and that coordination of the companies was an appropriate solution. It is clear that where an action not specifically provided for in the Act is necessary to enable the Commission to carry out part of its statutory duty, Section 16 allows such action to

be taken. Thus in United Gas Pipe Line Co. v. F.P.C., 385 U.S. 83 (1966), a pipeline purchaser which had ceased taking gas from a producer when the underlying contract expired and the producer filed for a rate increase was held to have abandoned facilities without the necessary authorization under Section 7(b). The Supreme Court, rejecting an argument that the Commission lacked statutory authority to direct the pipeline to continue purchasing gas "in amounts specified in an expired contract and at prices set unilaterally by Continental" (385 U.S. at 89), held that Section 16 supported the Commission's order so requiring, "as an incident to regulating transportation or sale." (Id., at 90.)

And, as this Court said in Public Service Commission of New York v. F.P.C., 117 AppDC 195, 198-199, 327 F. 2d 893, 896-897 (1964):

While the Natural Gas Act is a statute and is not to be construed as a "constitution", nevertheless the problems placed under Commission administration, with consequent Commission responsibilities, call upon the courts to give the Act a scope reasonably necessary to permit the agency to perform its tasks consistently with the provisions and purposes of the legislation. The broad grant of implementing authority conferred by Section 16 is not confined to procedural regulations * * *. * * *

All authority of the Commission need not be found in explicit language. Section 16 demonstrates a realization by Congress that the Commission would be confronted with unforeseen problems of administration in regulating this huge industry and should have a basis for coping with such confrontation. While the action of the Commission must conform with the terms, policies and purposes of the Act, it may use means which are not in all respects spelled out in detail. * * *

The Commission's action in permitting Manufacturers temporarily to suspend the use of the service agreement, surrounded as it was with conditions protecting the interests of Penn Gas and other customers, fully met this standard.

CONCLUSION

For these reasons, the order of the Commission should be affirmed or dismissed.

Respectfully submitted,

Richard A. Solomon,
General Counsel,

Peter H. Schiff,
Solicitor,

Robert L. Russell,
Assistant General Counsel,

David F. Stover,
Attorney,
For respondent.

Federal Power Commission,
Washington, D. C. 20426.

September 17, 1969

APPENDIX

The Natural Gas Act, June 21, 1938, c. 556, 52 Stat. 821-833, as amended, 15 U.S.C. 717-717w, provides in pertinent part:

SEC. 4(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

* * * * *

SEC. 7(c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: Provided, however, That if any such natural-gas company

or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: Provided, however, That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

* * * * *

SEC. 7(e) Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

* * * * *

SEC. 16 The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this act; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner

which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

Federal Power Commission Regulations under the Natural Gas Act, 18 C.F.R., Parts 154 and 250 provide in pertinent part:

§154.64 Cancellation or termination.

When a filed tariff, contract or part thereof is proposed to be canceled or is to terminate by its own terms and no new tariff, executed service agreement or part thereof is to be filed in its place, the natural-gas company shall notify the Commission of the proposed cancellation or termination on the form indicated in §250.2 or §250.3, whichever is applicable, at least thirty days prior to the proposed effective date of such cancellation or termination. A copy of such notice to the Commission shall be duly posted. With such notice, the company shall submit a statement showing the reasons for the cancellation or termination, a list of the affected purchasers to whom the notice has been mailed, the sales made or transportation performed and revenues therefrom, by months, for the twelve months immediately preceding the proposed effective date of the cancellation or termination.

Actual data shall be used as far as possible, and any estimated data should be designated as such. Such statement shall be subdivided by rate schedules, classes of service, customers and delivery points when more than one is involved: Provided, however, That the filing of such notice shall not be construed as compliance with the requirements of section 7(b) of the Natural Gas Act.

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§250.2 Form of proposed cancellation of tariff or part thereof (see §154.64).

Name of Company FPC Gas Tariff Original Volume No. -----	Revised Sheet No. Superneding-Sheet(s) No. -----	
CANCELLATION OF TARIFF		
Notice is hereby given that effective----- FPC Gas Tariff of ----- is to be cancelled.	(date) (Name of Company)	To be used for cancellation of an entire Tariff.
CANCELLATION OF RATE SCHEDULE		
Notice is hereby given that effective----- Rate Schedule ----- constituting ----- Sheet(s) No. (s) ----- of the FPC Gas Tariff of ----- ----- (Name of Company)	(date) is to be cancelled.	To be used when an entire Rate Schedule is to be can- celled.
CANCELLATION OF SHEET NO. -----		To be used for cancellation of individual sheets.
Notice is hereby given that effective----- Sheet(s) No. (s) ----- of the FPC Gas Tariff of ----- ----- (Name of Company)	(date) is to be cancelled.	
Issued by ----- Issued on ----- (Name and Title of Issuing Officer)	Effective ----- (Date)	

**§250.3 Form of proposed cancellation or
termination of contract or part
thereof (see §154.64).**

Notice is hereby given that effective the
day of _____, ___, the
contract with _____,
(Name of purchaser or purchasers)
dated _____ and relating to serv-
ice under rate schedule(s) _____

(Here identify the rate schedule(s), giving
sheet numbers in the Tariff)
is to be _____

(Specify whether it automatically terminates
by its terms or is to be canceled by action
of the parties)

(Name of natural-gas company filing
notice)

By _____

(Title)

Dated _____

In The
UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit
No. 23,051

Pennsylvania Gas and Water Company, Petitioner
v.
Federal Power Commission, Respondent

PETITION FOR REHEARING OF
THE MANUFACTURERS LIGHT AND HEAT COMPANY
AND HOME GAS COMPANY

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 2 1970

Nathan J. Vaucom
CLERK

E. B. Calland
800 Union Trust Building
Pittsburgh, Pennsylvania 15219

Giles D. H. Snyder
99 North Front Street
Columbus, Ohio 43215

The Manufacturers Light and Heat
Company
Home Gas Company

April 2, 1970

In The
UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit
No. 23,051
Pennsylvania Gas and Water Company, Petitioner
v.
Federal Power Commission, Respondent

PETITION FOR REHEARING OF
THE MANUFACTURERS LIGHT AND HEAT COMPANY
AND HOME GAS COMPANY

The Manufacturers Light and Heat Company (Manufacturers) and Home Gas Company (Home), Intervenors, hereby urge the Court to grant rehearing of its decision of March 19, 1970. Manufacturers and Home believe that the Court's action vacating the temporary certificate herein was the product of a misunderstanding of both basic facts and the nature and scope of the Federal Power Commission's order under review. Whatever the cause, justice has not been done in this case.

On March 26, 1970, a decision was issued by the Commission's hearing examiner on the issue of permanent certification of Coordinated Operations. That decision would authorize Coordinated Operations and contains discussion bearing on the questions before the Court on rehearing as raised in this petition. A copy of the examiner's decision is attached hereto for the Court's ease of reference.

I

THE COURT'S ACTION IS AN INJUSTICE
TO THE EFFORTS OF MANUFACTURERS
AND HOME TO MEET COMPETITION

From a reading of the Court's decision it appears obvious that the mainspring for its action vacating the temporary certificate was the belief that the "emergency" was of Home's own making and could have been avoided. At page 7 thereof it is said that "Home knew as long ago as February 1968 that its customers would increase their take substantially if Home's proposal for rate changes became effective." At page 8 the Court quotes with apparent approval a statement in a pleading of Pennsylvania Gas and Water Company (Penn Gas) that the emergency was "of Applicants' own making." At page 13 of the decision the Court concludes that the joint application of Manufacturers and Home "does not establish the kind of 'emergency' needed to justify the issuance of the temporary certificate...", and the first reason cited in support of that conclusion is the belief that the situation was foreseeable and brought about by Home's own action: "This was not an unanticipated demand that came on Home unawares. It was a foreseeable condition, and Home had been put on notice beforehand that there was at least a question as to effect on Manufacturers' existing customers...." The same paragraph of the decision reasons that a party is not "free to invoke temporary powers by precipitating an 'emergency.'" Again, at page 16 it is said that "The 'emergency' presented by the applicants and adopted by the Commission was a condition resulting from their own action in

proposing and approving the rate settlement...", and at page 18 the Court characterizes the situation as "a demand that was foreseeable and stimulated by a company rate adjustment... ."

While one of the initial effects of the revised rates for Home approved by the Commission in Docket No. RP66-6 was the subject added annual sales and while it is true that Home knew that those additional sales would take place, it hardly does equity for the Court to pass so easily to the conclusion that this renders Home ineligible for temporary relief. The filing of Home in Docket No. RP66-6 was part of the restructured tariff filings made in 1965 by all jurisdictional Columbia System companies. In the order of October 8, 1968, approving the settlement of Home's Docket No. RP66-6 and Manufacturers' Docket No. RP66-5 (40 F.P.C. 1008) the Commission stated (at 1008):

"The proposed settlement substantially conforms to the cost allocation and rate design principles utilized in the settlement of the similar restructured rate proposals of Home's affiliates in the Columbia Gas System. ..."

The Commission cited the cases involving the other Columbia affiliates: restructured rates for Atlantic Seaboard Corporation and United Fuel Gas Company were approved by order of January 26, 1967, reported at 37 F.P.C. 244; similar rates for Kentucky Gas Transmission Corporation were approved by order of October 31, 1967 (38 F.P.C. 875), and for The Ohio Fuel Gas Company by order of January 25, 1968 (39 F.P.C. 79). The restructured rates for Manufacturers and Home in Docket Nos. RP66-5 and RP66-6, which became effective under the order of October 8, 1968, were the last of the restructured tariffs to receive Commission approval.

The basic purpose of the restructured rates was to meet competition, both from other southwest pipeline companies and at the distributor level. That purpose was recognized less than two years ago by this Court in Atlantic Seaboard Corp. v. FPC, 131 U.S. App. D.C. 291, 404 F.2d 1268 (1968). As here, Judge Leventhal was the author of the Court's opinion and he observed: "...Columbia had recently filed restructured tariffs with the Commission--which have since been approved--designed to make the Columbia companies more competitive and to encourage growth of high load factor sales. ..." (131 U.S. App. D.C. at 293, 404 F.2d at 1270.) The Seaboard decision described the substantial changes effectuated by the restructured rates: "...As stated earlier, these new rates markedly reduce the commodity component of the rate schedule, narrowing the gap between Columbia and its competitors. Restrictions on boiler fuel usage were eliminated. New Winter Service schedules were established permitting summer nominations for winter delivery and alleviating the purchaser's high cost of meeting winter peaks occasioned by the growth in space heating load. The increase in demand component of the tariff also makes low load factor use of the facilities more expensive. ..." (131 U.S. App. D.C. at 297, 404 F.2d at 1274.)

As it relates to Home's present predicament, by far the most important statement by the Court in the Seaboard case was the following:

"The point is, however, that a policy favoring effective competition necessarily brings with it the reality of economic pinch, present or threatened. The presence of a second seller means that the historic supplier

loses out on sales it would have otherwise had--assuming the same ardor in promoting sales in a noncompetitive setting. It is through the enhanced efforts made by the supplier in response to such pressure that competition reaps its benefits." (Emphasis supplied.) (131 U.S. App. D.C. at 295, 404 F.2d at 1272.)

The rates approved for Home in Docket No. RP66-6, which had the initial, incidental effect of the added annual sales to Orange and Rockland and Central Hudson, represented the end result of the "enhanced efforts" by Home and its affiliates in the Columbia Gas System undertaken in response to the pressure of competition. It hardly does justice for those efforts to now be the cause for the Court's action vacating the temporary certificate. This is particularly true when Home has been one of the Columbia companies hardest hit by competition. The record before the Court shows that Home has experienced little or no market growth over the past ten years--since the time the Commission authorized Orange and Rockland and Central Hudson to purchase gas from Tennessee Gas Pipeline Company (R. 181, 479). See Tennessee Gas Transmission Co., 14 F.P.C. 544 (1955). The Commission's order authorizing those customers to purchase gas from Tennessee was before this Court on appeal in Home Gas Co. v. FPC, 97 U.S. App. D.C. 300, 231 F.2d 253 (1956), cert. den. 352 U.S. 831, 77 S. Ct. 45, 1 L.Ed. 2nd 51 (1956).

We refer the Court to pages 17-18 of the examiner's decision attached hereto for discussion bearing directly on this question.

II

THE TEMPORARY CERTIFICATE
IS LIMITED IN SCOPE AND CONSTITUTES
THE LESSER REMEDY CALLED FOR BY THE COURT

At pages 17-18 of its decision the Court holds, in effect, that the temporary certificate issued by the Commission was too large a remedy for the limited problem facing Manufacturers and Home. The Court there states that there is "a relation between the kind of emergency and nature of the solution"; it summarizes the Commission's action as one granting temporary authority for a merger when the problem "could have been taken care of by a lesser certificate, one merely authorizing increased volumes from Manufacturers to Home."

What the Court said ought to be done in this case was done by the Commission. The temporary certificate granted by the Commission was limited in scope; out of the total proposal presented by Manufacturers and Home, the Commission carved out the single element needed to enable the required volumes to be delivered to Home, namely, suspension of the service agreement. The Commission's order on rehearing made clear that this was the narrow authority granted by the temporary certificate (R. 540-41):

"By the attachment of these conditions, in addition to the general language set forth above, we contemplated that the elimination of the sales relationship between Manufacturers and Home during the term of temporary authorization, would permit these affiliates of Columbia System to make the additional sales to Rockland and Central Hudson-- without disrupting the Commission's regulation of them on an individual company basis--pending final resolution of the propriety of the arrangement. Except for the interim suspension of their service agreement, the Applicants have no authority under the temporary to make any changes to their

separate tariffs and rate schedules on file with the Commission, or to effectuate any changes to their corporate books and records maintained pursuant to the Commission's Uniform System of Accounts, prescribed under the Natural Gas Act."

Applicants may have proposed an operational merger and the effectuation of a joint tariff pursuant thereto, but it is clear that the Commission gave no such authorization. In this connection, the Court states at page 18 of its decision that the alternative of a temporary rate for off-peak gas "would not have affected the status quo of the present tariffs payable by the customers of either Home or Manufacturers during the temporary period." The language in the Commission's order on rehearing, quoted above, makes it clear that Manufacturers and Home were not granted authority to effectuate the joint tariff and, in fact, they have not done so. The temporary certificate has not affected the status quo of the present tariffs of the two companies: the rates being paid by the customers during the temporary period are precisely the same as they would have been otherwise. As noted by the Commission (R. 541), the test periods involved in the pending individual rate cases of Manufacturers and Home antedate the commencement of operations under the temporary certificate.

The action taken by the Commission was, in fact, the "lesser" remedy discussed by the Court.^{1/}

^{1/} The remedy suggested by the Court of a special off-peak gas rate would have been a more drastic solution of questionable result. The Court must realize that a special rate, restricted in operation to a single customer, faces the hurdle of charges of discrimination and preference. Special rates almost inevitably result in virtually endless disputes. The examiner's decision (at 16-19) contains a thorough review of all possible alternatives to Coordinated Operations, none of which were found to be viable.

III

THE COMMISSION'S ACTION PROTECTS THE INTERESTS OF ALL PARTIES

The Commission's temporary certificate requires Manufacturers and Home to maintain separate books (R. 490). concerning which in the order on rehearing the Commission stated the following (R. 541):

"The only material cost component which arguably would not be readily available in regularly maintained accounts, as a result of the suspended service agreement, would be Home's contract demand volume. However, inasmuch as Manufacturers' 'books will also reflect all deliveries of gas between Manufacturers and Home,' it will be possible to impute an appropriate demand volume based on actual deliveries, if that becomes necessary in ratemaking proceedings having part or all of the term of the temporary included in the test period. . . ."

The Court concluded at pages 13-14 of its decision that the Commission's bookkeeping and billing conditions set forth in the temporary certificate do not represent a complete answer to the problem, stating:

"But unless the joint application consisted merely of empty and illusory phrases, their presentation that coordinated operations would permit greater efficiency in operation must have presupposed that they could and would operate in a different way in terms of physical movements if allowed to proceed in a coordinated rather than an uncoordinated basis. . . ."

Since the temporary certificate was limited to a suspension of the service agreement, the operational changes involved relate to gas flow. Manufacturers is Home's supplier, and the flow of gas necessarily will be from Manufacturers to Home. The temporary

certificate permits added volumes to be delivered to Home and in such quantities from day to day as best accommodates both Manufacturers and Home. This is all that is involved under the temporary certificate, and under the Commission's conditions there will be available records reflecting the deliveries to Home by Manufacturers on each and every day the temporary certificate is in effect.

The separate records required under the Commission's order are complete. The property accounts--rate base and depreciation--are being maintained separately for Manufacturers and Home. The operation and maintenance expenses of each are individually recorded. As noted by the Commission (R. 541), its order does not authorize Manufacturers and Home to undertake any changes in their individual rates or in their respective books and records. The daily quantities of gas delivered by Manufacturers and Home will be known; and when the Commission says that the only material cost component not readily available will be Home's contract demand level, but that this can be imputed if ever required (R. 541), the Court ought to rely on the Commission's expertise that this is so.

The absence of any potentials for injury to Penn Gas and other customers resulting from Coordinated Operations is discussed at pages 11-12 of the examiner's decision.

WHEREFORE, the Court is respectively urged to grant rehearing and, upon further consideration, to affirm the Commission's order here under review.

Respectfully submitted,

E. B. CALLAND

E. B. Calland
800 Union Trust Building
Pittsburgh, Pennsylvania 15219

Giles D. H. Snyder
99 North Front Street
Columbus, Ohio 43215

Attorneys for
The Manufacturers Light and Heat
Company
Home Gas Company



PROOF OF SERVICE

E. B. CALLAND, Attorney for Petitioners, hereby certifies that two copies of the within Petition for Rehearing have been mailed this day to the following parties to this proceeding:

Pennsylvania Gas and Water Company

Reuben Goldberg
Allan Freidson
Charles E. Thomas

Federal Power Commission

Richard A. Solomon,
General Counsel
Peter H. Schiff,
Solicitor
David F. Stover,
Attorney

E. B. CALLAND

E. B. Calland
Attorney

Dated this 2nd day of April, 1970

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

RECEIVED
MAR 30 1970
LEGAL DEPT.

The Manufacturers Light and Heat Company)
and Home Gas Company) Docket No. CP68-364

PRESIDING EXAMINER'S INITIAL DECISION ON APPLICATION
FOR AUTHORIZATION TO COORDINATE JURISDICTIONAL OPERATIONS

(Issued March 26, 1970)

APPEARANCES

Giles D. H. Snyder, Edward B. Calland, Albert McBride, Jr.,
Richard A. Rosan and William C. Hart for The Manufacturers
Light and Heat Company and Home Gas Company

Reuben Goldberg, Allan Freidson and Charles E. Thomas for
Pennsylvania Gas and Water Company

Morrell S. Lockhart, Theodore J. Carlson and M. Wade Kimsey
for Central Hudson Gas & Electric Corporation

W. K. Scott, Jr. for United Natural Gas Company

J. David Mann, Jr. and John C. Mason for UGI Corporation

Cameron F. MacRae, Halcyon G. Skinner and John A. Lodge for
Orange and Rockland Utilities, Inc.

Frederic H. Lawrence and Francis I. Fallon for New York State
Electric and Gas Corporation

Morton L. Simons and Kent H. Brown for Public Service Commission
of The State of New York

Paul L. Brady for the Staff of the Federal Power Commission

KANE, PRESIDING EXAMINER: This proceeding involves a joint application filed on June 20, 1968, by Manufacturers Light and Heat Company (Manufacturers), a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania, and Home Gas Company (Home), a New York corporation with its principal place of business in Pittsburgh, Pennsylvania, affiliated and wholly owned subsidiaries of the Columbia Gas System, Inc., seeking a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act. Authorization is sought for the coordination of their jurisdictional operations allegedly to provide greater operating flexibility, to make available their underground storage fields on a combined basis and to permit Manufacturers to optimize purchases under its gas supply contracts to the best advantage of both companies. This so-called proposed "operational merger", it is further alleged, represents an interim step taken in contemplation of the corporate merger of the two companies, for which appropriate certificate authorization will be filed within 18 months after the Commission Order approving operations becomes final.

Notice of filing of the joint application was duly issued on July 3, 1968, and published in the Federal Register on July 11, 1968 at 33 Fed. Reg. 9981. Such application reflects the following contemplated operational changes: (1) The present service agreement between Manufacturers and Home would be cancelled; (2) Manufacturers would discontinue the separate billing of interstate gas to Home; (3) The market requirements of the customers of Manufacturers and Home would be furnished in a manner which would most effectively use the interstate pipeline and storage facilities of Manufacturers and Home; (4) Jurisdictional sales would be made under a joint FPC gas tariff which would supersede and cancel the FPC gas tariffs currently in effect. In connection with the proposed joint tariff, the applicants seek to impose a provision for a minimum commodity obligation requiring customers to purchase at a 60% load factor commencing November 1, 1968, 62 1/2% load factor commencing November 1, 1969, and 65% load factor commencing November 1, 1970 and thereafter.

Following the filing of the joint application, the applicants on October 10, 1968, applied for a temporary certificate authorizing the coordinated operations sought in the instant proceedings. Notwithstanding the vigorous opposition by Pennsylvania Gas and Water Company (Penn Gas), the Commission by letter order dated March 17, 1969, granted the said application for a temporary certificate "upon the express conditions that (1) the companies' (sic) maintain their books and records in such a manner that in the event the Commission denies the companies' (sic) a permanent certificate Manufacturers and Home may resume individual operations; (2) the companies will bill their respective customers at each company's filed rates, including rates subject to refund at

Dockets Nos. RP69-16 and RP69-17 upon their effectiveness, and will not impose any minimum annual commodity bill against any customer; and (3) the granting of this temporary certificate will have no effect on the jurisdiction of the Securities and Exchange Commission to consider the issue of the retainability of Home Gas Company as part of the integrated natural gas system of The Columbia Gas System, Inc., which issue was reserved for future consideration and determination by an SEC Order of November 30, 1944."

On April 16, 1969, Penn Gas filed for rehearing of the said Commission action and for a stay of the authorization of coordinated operations. By Order issued May 16, 1969, the Commission denied the application for rehearing and stay, rejecting inter alia, the arguments made by Penn Gas to the effect that ". . . the letter order unlawfully changes existing rates between Manufacturers and Home and between Manufacturers and Penn Gas; that there is no rate schedule on file governing the proposed operations in violation of the Act; and that the Commission has unlawfully authorized a preferential arrangement whereby Manufacturers will deliver natural gas to Home in excess of its contract demand volumes without requiring Home to pay Manufacturers the related contract demand charges required of other customers by Manufacturers."

Following the Commission's May 16th Order denying the application for rehearing and stay of its March 17th Order, Penn Gas filed a petition for review of both such Orders in the United States Court of Appeals for the District of Columbia Circuit, sub nom Penn Gas and Water Company v. Federal Power Commission No. 23051. The matter is now pending before that Court. 1/

By Order issued March 17, 1969, published in the Federal Register on March 26, 1969, at 34 Fed. Reg. 5665, the Commission provided for a prehearing conference to be held on May 1, 1969, and granted intervention to Central Hudson Gas and Electric Corporation (Central Hudson), New York State and Electric Gas Corporation (New York), Orange and Rockland Utilities, Inc. (Rockland), customers of Home; and Penn Gas, UGI Corporation (UGI) and United Natural Gas Company (United), customers of Manufacturers. In addition the New York State Commission filed a notice of intervention.

The prehearing conference was held on May 1, 1969, and the hearing begun on July 21, 1969 was concluded on September 17, 1969. Briefing by simultaneous initial and answering briefs was completed, and the case fully submitted on December 10, 1969.

The evidence adduced at the hearing was designed to resolve the following issues:

1/ See Appendix "A"

(1) Would approval of the proposed coordinated operations, and the terms and conditions thereof, violate any requirement of the Natural Gas Act and the regulations thereunder;

(2) Is the approval of the applicants' proposal for "coordinated operations" required by the present or future public convenience and necessity within the purview of the Natural Gas Act and the regulations thereunder;

(3) Would the proposed alternatives to coordinated operations provide either a more effective or more economical means to achieve the benefits and/or economies sought to be achieved, and to alleviate the hardships sought to be alleviated, by coordinated operations; and

(4) Is the proposed annual minimum commodity bill justified or required in connection with the proposed coordinated operations.

The applicants' proposal is supported in its entirety by Central Hudson and Rockland, customers of Home, both by evidence and in brief. UGI, Manufacturers' largest wholesale nonaffiliated customer, while not adducing any evidence, by brief recommends approval of coordinated operations "if appropriate conditions are included in the certificate." (Br. p. 2) Penn Gas, a customer of Manufacturers and the sole objector to coordinated operations, mounted a full scale evidentiary presentation in opposition, including allegedly more feasible alternatives.

The Commission Staff by brief supports the Applicants' presentation and its proposal for coordinated operations, but opposes approval of the annual minimum commodity bill provisions sought to be included in the proposed joint tariff. The Staff's position, as summarized in the conclusion of its brief, is to the effect that the record "adequately demonstrates that the Coordinating of Manufacturer's and Homes (sic) operations is required by public convenience and necessity. * * * There has been no showing that it is undesirable or against the public interest and therefore certification is called for, indeed required by the Federal Power Commission under the Natural Gas Act." (Br. p. 76, 77)

The proposal for coordinated operations was admittedly initially designed to avoid contemplated revenue losses resulting from operational developments on the Home system arising out of anticipated incremental commodity sales to its two largest non-affiliated customers, Central Hudson and Rockland. Thus, it appears that as a result of the restructuring of the Columbia companies' tariffs, approved by the Commission on October 8, 1968.

after settlement 1/, and the resultant reduction of Home's commodity rate 2/, Central Hudson and Rockland advised Home that they intended to "fill the valley" in their purchases and that their future takes from Home would be at substantially higher load factors. 3/ (Tr. 2/146) As a result, while these customers had formerly purchased gas from Home at approximately a 40% load factor for about 10 years prior to 1969, their estimates in the Spring of 1969 reflected their intention to purchase at load factors ranging from approximately 80% for Rockland to approximately 100% for Central Hudson during the succeeding four years. (Exh. 24; Tr. 2/149) The anticipated increase in the future takes at the substantially higher load factors, permitted under existing contracts calling for delivery of stated contract demands, would be made at the currently effective Home commodity charge of 31.39¢ per Mcf. 4/ However, the average charge to Home of the increased volumes would be substantially higher under noncoordinated operations because Home was already purchasing from Manufacturers at a 100% load factor and would be required to increase its contract demand in order to meet its obligation to satisfy the increased requirements of its two customers. The increased contract demand purchases from Manufacturers at 100% load factor would average approximately 40.5¢ per Mcf with a resultant loss to Home of 9.11¢ per Mcf on the incremental volumes. Since for the year ending October 1970, the increased volume requirements were shown to be in excess of 7,000,000 Mcf, the resultant net loss to Home would be an estimated \$637,000.

The proposal under consideration not only contemplates the avoidance of such alleged net revenue loss but also the continuation of the same market requirements of both Manufacturers and Home at reduced cost and greater utilization of existing facilities. When viewed against the backdrop of the Applicants' evidentiary presentation, the extensive cross examination of the witnesses and their economic and engineering testimony, and the testimony adduced by Penn Gas in opposition thereto, it appears that the proposed coordinated operations were designed to accomplish, and will result in, certain operational benefits, which, it is alleged, will redound to the benefit of not only the Applicants but to their respective customers and the consuming public.

- 1/ Docket No. RP66-6.
- 2/ The reduction was accompanied by an increase in Home's demand charge.
- 3/ Load factor as used herein may be defined as the ratio of average daily volumes delivered to the contract demand.
- 4/ Slightly higher rates became effective subject to refund on November 1, 1969.

In order to discredit the presentation made in behalf of approval of the application, Penn Gas mounted a full scale attack directed toward establishing that "Home's dilemma - the sale of gas at a loss - was of its own deliberate making,"; (underscoring supplied) that "the sale of gas at a loss was the grand design to achieve the real goal of reducing costs to New York consumers, principally those of the affiliated Columbia Gas of New York at the expense of Manufacturers' customers."; (Br. p. 35) and that "the reduction of Home's commodity charge to an uneconomic and unsound level was merely a convenient contrivance to enhance the prospect of approval of coordinated operations for the benefit of New York consumers (12R 1218, 1219)." (Br. p. 36) The record neither supports the existence of any such Machiavelian design nor provides the necessary evidentiary support either for Penn Gas' conclusion as stated above, or for its conclusion that Home is trying "and should not be permitted, to foist the consequences of a colossal piece of bad managerial judgment on Manufacturers' customers." (Br. p. 38)

As stated by Staff, the "grand design" accusation "cannot stand the most elementary testing." (Rep. Br. p. 4) As indicated in Exhibit 14 pp. 3-4, of Manufacturers' total estimated requirements for customers (excluding Home) for the year ended October 31, 1970, approximately 62% is attributable to sales to affiliated companies, while only 56% of Home's customer requirements for the same period are accounted for by its affiliate, Columbia of New York. It would appear, therefore, that the Columbia system affiliated customers of Manufacturers (excluding Home) would be burdened with increased costs amounting to more than those allegedly saved by Home's affiliated customer, Columbia of New York. In effect, Manufacturers' affiliated customers would be subsidizing Home's nonaffiliated customers to the extent of their increased proportionate share of Home's alleged shedded costs. No such altruistic design can be attributed to the Columbia System.

A necessary concomitant of the coordinated operations involves the cancellation of the service agreement between Manufacturers and Home and the resultant discontinuance of the separate billing for jurisdictional deliveries of gas from Manufacturers to Home. In addition, jurisdictional sales to the separate customers of each company would henceforth be made under joint FPC gas tariff which while superseding the cancelled separate tariffs of Manufacturers and Home would reflect the same service and rates then currently in effect. 1/

1/ The joint tariff contains a proposed minimum commodity obligation. For discussion and disposition see infra, p. 20 et. seq.

These aspects of the proposal present a threshold legal question which must be resolved before determining the factual basis and merits of the proposal for coordinated operations and the validity of the opposition thereto. Thus, Penn Gas, as it did before the Commission in its opposition to the temporary authorization ^{1/} contends that the proposal may not be authorized because as a result of the cancellation of the service agreement between the applicants "Manufacturers' deliveries to Home will not be covered by any tariff, rate schedule, and service agreement." (Br. p. 18) Accordingly, it is contended, the proposed operation would constitute a violation of the filed rate schedule requirements of Section 4 of the Act as well as "the procedures for change in these filed rate schedules, contracts, etc., either upon the initiative of the natural gas company (Sections 4(d) and (e)), or upon the Commission's initiative (Section 5(a))". (Br. p. 18) Finally, in this connection, Penn Gas concludes that "In authorizing Applicants to transact their business without a filed rate schedule and service agreement setting forth the rates and charges and terms and conditions of service, the Commission would be violating the requirements of the Act and its own regulations, . . ." (Br. p. 20)

A basic fallacy in Penn Gas' argument in this connection is its adoption of the conclusion in its thesis that the internal transactions between Manufacturers and Home after coordinated operations would involve the sale of natural gas within the purview of the applicable sections of the Natural Gas Act and the Commission's regulations issued thereunder. However, under the proposed coordinated operations the two companies would be considered and treated as a de facto single entity for regulatory purposes. Under such circumstances, as recognized by Staff, it would be "error to consider Home a customer of Manufacturers. There cannot be preference or discrimination as between them because Manufacturers ceases to be a seller to Home." (Reply Br. pp. 13, 14) Under the proposed coordinated operations Manufacturers-Home will make all sales and render all services previously performed by them separately and their integrated transmission and storage facilities will be operated as a single integrated pipeline system. Since it is the rates which are charged in connection with sales of natural gas which must be filed and since there would be no such sales as between Manufacturers and Home after coordinated operations, the requirements of the Natural Gas Act with respect to the filing of rate schedules and service agreements in connection with sales of natural gas do not apply. See Sun Oil Company v. FPC 256 F.2d 233, 238.

^{1/} See Commission Order Denying Rehearing, issued May 16, 1969, rejecting a similar contention.

While as indicated supra, the proposal for coordinated operations was initially prompted by the necessity to avoid contemplated revenue losses resulting from operational developments on the Home System in connection with its commodity sales to Central Hudson and Rockland, the evidence adduced by Applicants demonstrates other definite operational advantages resulting from such coordinated vis-a-vis noncoordinated operations which will result in more efficient utilization of existing facilities and avoidance of construction of additional facilities, economies of operation, and resultant reduction in total cost of service. These advantages, furthermore, are to be realized without diminution or curtailment of service previously rendered the customers of both Manufacturers and Home.

One of the most significant of the operational advantages involves the efficient utilization of the storage capacities of both companies. Thus, Home's storage which would otherwise be idle can be expanded instead and utilized for Manufacturers' benefit with a beneficial chain reaction on other Columbia System pipeline operations. Home's storage fields will be utilized to minimize required deliveries to Home on Manufacturers' design peak day; and Manufacturers, in turn, will be able to make increased deliveries to Home during off-peak months in order to deliver the required annual volumes to Home by the end of the year. By utilizing the additional available storage, Manufacturers would be enabled to mitigate its storage deficiency and to optimize its purchases from United Fuel thereby avoiding an increase in its contract demand. 1/

Home, on the other hand, would be in a position to develop additional storage at its Greenwood field in order to satisfy the increased requirements of Central Hudson and Rockland, which development would be unfeasible under noncoordinated operations in view of the necessity of meeting such requirements by increased contract demand purchases at 100% load factor.

Penn Gas in its presentation alleges that there is no necessity for the development of the Home storage for the benefit of Manufacturers on the ground that there is additional undeveloped storage available to Manufacturers on its own system and that Manufacturers has more than enough planned deliverability from storage without relying upon Home to develop additional storage.

The level of Manufacturers' required CD with United Fuel under coordinated operations would be lower, beginning with a difference of 13,000 Mcf during the 12 months ending October 31, 1970, to a difference of 22,000 Mcf for a similar period ending October 31, 1973; its summer 1973 cutbacks on purchases from United Fuel would be reduced to 3,643,200 Mcf as against a comparable figure of 12,420,000 Mcf under non-coordinated operations.

Its witness also compares the increase in Home's market requirements with the claimed loss in peak day requirements from storage resulting from the increased load factor sales to Central Hudson and Rockland concluding that "in about two years, Home's (peak day) market growth would just about absorb the claimed loss in storage utility resulting from the increased load factor of sales to Central Hudson and Rockland." (Tr. 15/1594-5)

Furthermore, in attacking the alleged beneficial effect of the coordinated operations' use of the combined storage facilities, the Penn Gas witness refers to adverse effects on both Columbia Gulf and United Fuel first in respect to the necessity for additional facilities to transport the increased annual volumes for Central Hudson and Rockland and second with respect to a necessary rate increase by United Fuel to offset the loss in demand revenues from Manufacturers. However, this position is rebutted by the Applicants' testimony to the effect that additional facilities would have to be installed through 1972 by Columbia Gulf and United Fuel under noncoordinated operations amounting to approximately 1.4 million dollars for Columbia Gulf 1/ and 2.4 million for United Fuel with a higher net annual cost of \$87,211 2/ for the two companies for the year ended October 31, 1973.

With respect to the 7,000,000 Mcf additional annual volume to be taken by Central Hudson and Rockland, the testimony indicates that no additional construction of facilities by either Columbia Gulf or United Fuel would be necessary in the event of the approval of coordinated operations. In such event, these volumes would not be transported on the Columbia System but would instead be purchased by United Fuel from Tennessee Gas Pipeline Company by reducing existing cutbacks in United Fuel's off-peak takes from Tennessee. These volumes will be transported 51 miles on United Fuel's system, from Cobb Station to Glenville Station, where existing facilities are designed to meet the contract

- 1/ Representing actual anticipated cost but during a period of relatively cheap expansibility in the looping of Columbia Gulf's facilities. Based on the averaging technique of Applicants' witness, Spinks, the investment savings under coordinated operations would be five million dollars. Staff, however, rejects this method. There is no reason for determining this issue here.
- 2/ This net figure is arrived at by subtracting United Fuel's higher demand revenues of \$624,888 ($\$2.367 \times 22,000 \text{ Mcf} \times 12 \text{ months}$) from the costs associated with additional plant investment, \$712,099. (Exh. 54 p. 1)

demand of Manufacturers each day of the year. Penn Gas makes the point that it would not be possible to supply the winter portion of the 7,000,000 Mcf by reduced cutbacks on Tennessee Gas when United Fuel is already taking at 100% load factor from Tennessee. The evidence indicates, however, that the necessary annual volumes will have been taken from Tennessee during the off-peak months, moved downstream on Columbia's System and placed in the combined storage of Manufacturers and Home to be delivered out of such storage as needed. Penn Gas claims that if such be the case, then the Applicants' cost impact exhibits are incorrect in that they do not reflect storage costs for the winter portion of the 7,000,000 Mcf. However, as indicated by the Applicants' witness, Howard, all of the costs of coordinated operations are included in such exhibits including the storage costs of such incremental volumes notwithstanding the fact that there is no specific breakdown with respect to the specific storage costs attributable to such volumes.

Not only will more efficient use be made of the Applicants' combined storage facilities under coordinated operations, but identifiable economies of operation will be effected on the combined Manufacturers - Home system reducing their over-all total cost of service. Thus, the evidence reflects an indicated savings of \$615,100 on construction costs for the period through 1972. 1/ While there was some dispute involving the calculation of the dollar amount of the annual savings in the costs of operation under coordinated operations, the evidence supports the finding that the estimated net annual cost savings for the year ending October 31, 1973, would amount to between \$650,000 and \$710,000 depending, inter alia, upon the rate levels assumed and the mechanics employed in determining such figure. 2/

In addition to the above referred to savings in the cost of operation, economies will be achieved not only in connection with administrative costs but also as the result of the more efficient use of the capacities of the two systems and the flexibility of

1/ The net figure is arrived at by combining the increase in Home's construction costs of \$3,207,300 (attributable mainly to the development of the Greenwood storage field) with a savings by Manufacturers of \$3,822,400. (Exh. 6)

2/ The spread is designed to accommodate adjustments suggested by Penn Gas' witness, Benson, and the rebuttal thereto by Applicants' witness, D'Agostino. (Tr. 2/175-177, 179-180)

operations which aid in supplying the demands of the various markets in light of the availability of sources of supply in terms of day to day changes. These economies, though not quantified, appear to be significant cost saving factors which will ultimately also have an effect in reducing the total cost of service of the combined companies. Such reduction is a desirable end to be achieved and constitutes a basic element in the determination of public convenience and necessity.

From the above, it appears that under coordinated operations the combined market requirements of both companies will be served at a reduced cost and with more efficient utilization of existing facilities. The savings in cost of service, while not fully quantified, appear to be substantial; will inure to the over-all benefit of all customers of both companies; and will be effected without diminishing the benefits enjoyed by the jurisdictional customers of either company. Furthermore, when examined and assessed from the viewpoint of the impact of the proposal upon such customers, 1/ it appears that none will be adversely affected or actually prejudiced absent the minimum commodity bill provisions of the proposed joint tariff. With the latter caveat in mind, even were we to accept the questionable assumptions upon which Penn Gas' witness bases his calculations, including the translation of Manufacturers' alleged loss into increased rates to Penn Gas, "you would have an impact upon Penn Gas directly, based upon the evidence here, of around 11 to 12 thousand dollars a year." (Tr. 15/1681-2) This sum represents approximately one tenth of one percent of Penn Gas' total purchased gas cost for 1968 of \$10,669,000. 2/ Thus, the alleged adverse effect upon Penn Gas, the sole objector to the proposal, appears at best to be not only speculative but insubstantial as well.

However, whether or not Penn Gas be correct in its description of Home as a high cost company as compared to Manufacturers, it could not be harmed under coordinated operations and the consequences thereof absent a revision of existing differentials between the Home and Manufacturers rate zones in an appropriate rate proceeding. In view of Applicants' positive assertion and reiteration of intention to maintain a status quo in that connection, and that "No change in the rate differential between Manufacturers and Home is now proposed or contemplated", and that "the basic philosophy of Coordinated Operations would be undermined if either Manufacturers or Home obtained a disproportionate advantage (12/1248-49).", (Rep. Br. p. 6) the spectre conjured up by Penn Gas can be laid to rest.

1/ Cf. White Motor Co. v. U. S. 372 U. S. 253, 259, 263-4;
Citizens For Allegan County v. FPC 414 F.2d 1125, 1129.

2/ Total gas sales revenues for the same year amounted to
\$24,419,000. (Tr. 15/1685)

In any event, Penn Gas' alleged fear that in some manner the Applicants will be permitted to pass, or unload, some part of Home's alleged higher cost of service on to Manufacturers' present customers is based upon general rate propositions, including rate design and rate impact, which are unaffected by the specific action sought to be certificated herein under Section 7 of the Natural Gas Act. Resolution of such rate problems, when and if they should arise, is not within the scope of this proceeding. They are correctly reserved for resolution under appropriate provisions of Sections 4 and 5 of the Act and the procedures peculiarly applicable thereunder. (Cf. Tennessee Gas Transmission Company 13 FPC 623, 627-8; aff'd 13 FPC 631.)

Finally, not only is there no real injury presently threatened by the proposal, but none is shown to be likely to arise in the future. Cf. Sun Oil Company v. FPC 256 F.2d 233, 239. In this connection, it is significant to note that UGI, the largest nonaffiliated wholesale customer of Manufacturers, purchasing approximately 200,000 Mcf a day as compared to approximately 29,000 Mcf per day ^{1/} for Penn Gas, does not share Penn Gas' alleged concern of threatened injury but on the contrary, after careful review of the proposal and the record concluded that "if appropriate conditions are included in the certificate the coordinated operation proposal should be approved." (Br. p. 3)

As indicated above, approval of coordinated operations entails the cancellation of the service agreement between Manufacturers and Home and the resultant discontinuance of the separate billing for Manufacturers' deliveries of gas to Home. Penn Gas and Staff contend that this aspect of the proposal constitutes an abandonment of "service" ^{2/} or "sale" ^{3/} within the purview of Section 7(b) of the Natural Gas Act. Recognizing that no request for such abandonment was contained in the application under consideration, Staff nevertheless concludes "that separate abandonment proceedings are not necessary in view of the facts presented and the nature of the application." (Br. p. 55)

It seems clear that the present contractual arrangement governing Manufacturers' service to Home is to be terminated and future deliveries made on a modified basis. While such deliveries

1/ Penn Gas seeks authorization to reduce this figure further by direct purchase from Transcontinental Gas Pipe Line Corporation of 23,845 Mcf per day now credited to Manufacturers' account. (Docket No. CP69-100)

2/ Staff Br. p. 55.

3/ Penn Gas Br. p. 15.

will be continued under the new arrangement without any immediate or apparent changes which might endanger the continuity and stability of the service previously rendered, the contemplated operation constitutes a technical abandonment of service requiring Commission authorization under the provisions of Section 7(b) of the Natural Gas Act. See, Shell Oil Company 25 FPC 1316, 1320.

The Examiner agrees with Staff in its conclusion that on the particular facts of this record, the contemplated abandonment of service as indicated above, involving, as it does, the cancellation of the contractual arrangement between the applicants herein without endangering the continuity and stability of the service previously rendered between them, would not adversely affect the public interest and would satisfy the requirements of Section 7(b). 1/ Accordingly, the Examiner will consider the application as including a request to abandon the sale heretofore made by Manufacturers to Home, and upon consideration of the factual presentation made herein, finds that such abandonment is permitted under the provisions of Section 7(b) of the Act and should be approved. See, Shell Oil Company, supra.

In addition to the discontinuance of the service agreement between Manufacturers and Home, the proposal for coordinated operations envisages the filing of a joint FPC gas tariff which will cancel and supersede the Applicants' existing individual tariffs. In effect, the latter will be reissued in the form of the proposed joint tariff and the services previously performed, and the rates previously applicable, under the individual company tariffs will be continued under the terms of the joint tariff. There will therefore be no discontinuance or curtailment of the service currently provided for the individual customers of the respective Applicants. Therefore, the proposal poses a different problem from that considered supra in connection with the proposed discontinuance of the service agreement between Manufacturers and Home. Since the proposed joint tariff, while superseding the existing individual tariffs, will provide for the continuation of the same services and will, in effect, contain the same rates as those previously existing, 2/ there will be no abandonment of services or facilities within the contemplation of the provisions of Section 7(b). See, Pacific Northwest Pipeline Corporation, 22 FPC 1091, 1100. Accordingly, there is no necessity to consider the application as containing any request for abandonment in connection with the superseded tariffs.

1/ Staff Br. p. 56.

2/ See infra re minimum commodity obligation.

Penn Gas attacks the proposal for coordinated operations as being "unlawful under the Natural Gas Act." (Br. p. 3) on the grounds that (1) it violates the rate schedule requirements of the Natural Gas Act; (2) Home and Manufacturers are not qualified, able and willing Applicants; (3) it constitutes an unlawful unilateral abrogation of a service agreement; and (4) joint rates are not authorized under the Natural Gas Act. Finally, it is contended that Applicants have not sustained their burden of proof. The validity of these objections has been analyzed and on the basis of such analysis it is found that Penn Gas' position is untenable in all respects.

The objection based upon the cancellation of the service agreement between Manufacturers and Home and the discontinuance of the separate billing of the interstate gas deliveries from Manufacturers to Home has been dealt with above. As indicated herein, the Examiner concluded that there is no legal or regulatory bar to the cessation of the filed rate schedule billing previously governing the deliveries of gas from Manufacturers to Home. 1/

The certification of the operation sought herein, involving a modification of existing tariffs and contract provisions in connection with such operation, is well within the Commission's power under Section 7 of the Natural Gas Act. Cf. Federal Power Commission v. Hunt 376 U. S. 515, 526. The scope and extent of such power is reflected in the court's opinion in the Permian case to the effect that ". . . rate-making agencies are not bound to the service of any single regulatory formula; they are permitted, unless their statutory authority otherwise plainly indicates, 'to make the pragmatic adjustments which may be called for by particular circumstances' . . ." 2/ Furthermore, general statutory authority for Commission action to terminate the service agreement and eliminate the rate schedule billing for the deliveries of gas from Manufacturers to Home may be found in the general powers provided in Section 16 of the Act which authorizes the Commission to "perform any and all acts, and to . . . issue . . . such orders . . . as it may find necessary or appropriate to carry out the provisions of this Act." The extent of such power is recognized in the courts' decisions in United Gas Pipeline Co. v. FPC 385 U. S. 83 (1966); and Public Service Commission of New York v. FPC 327 F.2d 893, 896 - 7. (C.A.D.C. 1964)

1/ There is no unilateral action involved which requires consideration of the effect of United Gas Pipeline Co. v. Mobile Gas Service Corp. 350 U. S. 332 (1956)

2/ Permian Basin Area Rate Cases 390 U. S. 747, 776-7 (1968).

There is no substance to Penn Gas' contention that Manufacturers and Home are not qualified, able or willing Applicants within the purview of Section 7(e) of the Natural Gas Act. The question of their authorization to do business in a State is governed by State law. As stated by the Applicants, "the short answer to this is that Applicants can be relied on to obtain whatever authorizations, if any, which may be required under the laws of the states involved." (Rep. Br. p. 4) Furthermore, the contention that Manufacturers - Home, if certificated for coordinated operations, would not be a person engaged in the transportation or sale of natural gas for resale in interstate commerce under Section 2(6) or is not such person within the provisions of Section 2(1) or 2(2) is hardly worthy of comment. The combined entity for regulatory purposes whether deemed an "organized group of persons, whether incorporated or not," or "a corporation", or any of the other indicated groups, would be a "qualified person" within the terms of the applicable statute. The argument advanced concerning the ownership or title of gas which would be delivered from Manufacturers to Home and from the combined entity to their respective customers poses no problem of any substance. There can be no serious question about the Applicants' ability and willingness "properly to do the acts and to perform the service proposed and to conform to the provisions of the Act, and the requirements, rules, and regulations of the Commission thereunder," as provided in Section 7(e) of the Act.

Penn Gas also contends that the proposal for coordinated operations "is unlawful and may not be authorized by the Commission because such proposal constitutes an unlawful unilateral abrogation by Manufacturers of its service agreement with Penn Gas (citing cases)." However, there is no factual basis for this legal conclusion. The Examiner agrees with Staff's conclusion to the effect that "the individual customers of Manufacturers and Home will not be adversely affected by the proposal and there is no abrogation of the service agreements involved. For the regulatory purposes of this Commission, Manufacturers and Home will be operating as one entity, but their separate customer contracts, including the one with Penn Gas will remain intact." (Rep. Br. pp. 12-13)

The alleged unlawfulness of the proposal for coordinated operations is also based upon the ground that such operations may not be certificated because "joint rates" are not authorized under the Natural Gas Act. It is well nigh impossible to follow the basis for this objection. If by "joint rates" some term of art was intended, such term has not been defined anywhere in the briefs or in the testimony. Accordingly, the Examiner is unable to proceed with any certainty to examine the question concerning the Commission's authority as contended by Penn Gas. If it were intended by the term "joint rates" to describe the joint tariff

which is to supersede the individual tariffs of the respective Applicants, the contention of Penn Gas constitutes merely a different way of stating the contention made to the effect that the Applicants are not qualified persons under the Natural Gas Act. This contention was disposed of supra. Furthermore, there is significantly no citation of any authority to support the contention that the filing of the joint tariff as proposed herein is prohibited. Nothing in the Natural Gas Act or the regulations issued thereunder can be construed to limit the Commission's authority to accept the proposed joint tariff for filing, as an integral part of the coordinated operations, where, as herein found, the authorization of the proposal for such coordinated operations is required by the present or future public convenience and necessity. There is neither legal nor factual basis for Penn Gas' contention to the contrary.

Citing Scenic Hudson 1/ Penn Gas alleges that Applicants have the burden of proof "of showing that feasible alternatives are not available for achievement of . . . reasonable and legitimate objectives of Applicants' proposal, namely, the allegedly more economic utilization of resources and facilities, within the framework of regulation and conservation of resources." Furthermore, it is alleged that the Applicants "have not met their burden and the record discloses that feasible and more economic alternatives are available in lieu of Applicants' proposal." (Br. p. 56) The Examiner disagrees with and rejects these conclusions. Initially, as the Commission has so succinctly stated "there is no requirement under Scenic Hudson that the Applicants sponsor alternative plans in order to show that their proposal has no better alternative." 2/

With respect to the allegedly more feasible and more economic alternatives, the Examiner rejects them as unsuitable vehicles to achieve the purposes sought by the proposal for coordinated operations. Such proposed alternatives do not provide the same advantages in the way of more efficient use of existing facilities or more efficient performance of the business of supplying natural gas to consumers at the lowest reasonable rate; and do not provide any solution for the problems sought to be resolved by the Applicants nor do they achieve the purposes for which the proposal for coordinated operations is designed.

1/ Scenic Hudson Preservation Conference v. FPC 354 F.2d 608
(CA2, 1965) Cert. den. 384 U. S. 941.

2/ Opinion No. 573, mimeo p. 6, Cumberland and Allegheny Gas Company, et. al. Docket No. CP69-191 issued March 5, 1970.

In commenting on and analyzing the alternative proposals suggested by Penn Gas, the Staff states, "Based on a thorough review of all the suggestions, research, direct testimony and extensive detailed cross-examination, Staff concludes that there is no better alternative than Applicants proposal for coordinated operations." (Staff Br. p. 44) The Examiner agrees with and adopts Staff's conclusion.

As "a feasible" and "the easiest alternative" to accommodate "Home's dilemma" Penn Gas proposes that "Home can go back to a rational, sound, and economic rate design in its pending rate cases at Docket Nos. RP69-17 and RP69-32." (Penn Gas Br. p. 43) This approach, it is contended, "would relieve Home of the purchase of 100% load factor firm gas from Manufacturers for resale as valley gas to Central Hudson and Rockland, as Home alleged it must do." (Penn Gas Br. p. 43) Inherent in this suggestion apparently is the proposal to increase the 31¢ per Mcf commodity rate because "Rockland would still use gas for boiler fuel even with a substantial upward revision of the 31 cents per Mcf commodity rate." (Penn Gas Br. 43-4)

This suggested approach might well be viewed against the backdrop of Penn Gas witness Benson's statement to the effect that he was not suggesting the best alternative to coordinated operations to relieve Home of its alleged difficulty "because it is not my purpose here to bail Home out." (Tr. 17/1957) In any event, however, not only is it difficult to see how an increase in Home's commodity rate would solve its dilemma or alleviate the conditions sought to be corrected by coordinated operations unless it is proposed that such rate be raised to the 100% load factor rate of Manufacturers, but it is equally difficult to see how any useful purpose will result from such increase which would have the effect of pricing the alleged boiler fuel sales out of Home's competitive reach. Certainly, there is no indication how any possible benefit to Home or its customers would result from such action nor is there any indication how such action could possibly be in the general public interest. Furthermore, as clearly stated by the Applicants "they will never revert to their unproductive rate structure of the past", (Rep. Br. p. 11) and that Home will not provide a rate design to discourage increased sales, and that its rate design is consistent with that of its pipeline competitors and permits the promotion of industrial sales at the retail level. (Tr. 2/173-4)

Finally, Penn Gas' proposal cannot be deemed either an appropriate or available alternative in these proceedings. Home's existing commodity rate is the result of the entire Columbia System's restructured tariffs which were developed to meet competition. Filed in 1965, the tariff was designed to give consideration to its customers' areas of concern relating to marketing industrial gas. Such rate should not and could not be changed in

this proceeding. 1/

As another alternative to coordinated operations, Penn Gas' witness Benson described several forms of rate schedules as being more desirable. However, the special rate schedule approach was not specifically recommended and the record cannot support any as an alternative to coordinated operations. There is no indication as to how a special rate schedule approach, even if one were feasible and nondiscriminatory, would achieve the benefits sought to be derived from coordinated operations.

Other operational alternatives are suggested by Penn Gas which are designed to substitute a piecemeal approach to the problem involved and do not take into account the balanced operations of the Columbia System nor are they designed to effectuate a reasonable, efficacious or rational way to accomplish the efficient use of existing storage and transportation facilities with a resultant decrease in the total overall cost of service anticipated from coordinated operations.

Thus, it is suggested that the Pittsburgh and Charleston Group of the Columbia System could accelerate storage developments. However, the testimony of the Columbia System experts reflects the impracticability of the suggestion since Manufacturers' future storage development, as well as that of all the Columbia companies shown in the Blue Book, is now based on maximum reasonable expectation, and Applicants' exhibits reflect all available storage which they are now in a position to estimate will be feasible. 2/

Another suggestion by Penn Gas involves the alleged superiority of the purchase of storage service by Manufacturers from Tennessee at Milford, Pennsylvania, over the taking of increased contract demand from United Fuel. However, the testimony reflects the fact that not only would the cost of contract demand gas from United Fuel be approximately \$8,000 less than the cost of storage service from Tennessee, but it would also be more appropriate for Manufacturers to take the former route, absent coordinated operations, since the suggested purchase of storage service from Tennessee would not provide Manufacturers with either the additional firm gas reserves or the same flexibility in serving Manufacturers' requirements in colder than normal periods. 3/

1/ See in this connection Staff Br. p. 48.

2/ A proposed storage field in Fayette County, Pennsylvania, referred to by Penn Gas witness, Benson, was eliminated from consideration because of economic infeasibility due to high acquisition cost of storage rights.

3/ To the same effect, see Staff Br. pp. 50-1.

Thus, it appears that the proposed purchase of storage service from Tennessee would not be a preferred means of meeting requirements under non-coordinated operations, and a fortiori, certainly not in lieu of the coordinated operations proposed by Applicants.

Finally, as an alternative, Penn Gas suggests the revision of rates on the entire Columbia System to include a dual-level seasonal commodity rate higher in the winter to assist in eliminating boiler field sales during winter periods and thereby lessen the need for storage. This proposal was unsupported by any probative evidence or any studies and could not be carried out without extensive tariff revisions involving all Columbia System companies and customers. The Examiner agrees with Staff's characterization "that this proposal can hardly be considered a serious alternative." (Staff Br. p. 52)

In summary, Penn Gas' alternatives have been considered in connection with the Commission's duty to guard the public interest. Upon such consideration, the Examiner is of the opinion that such suggested alternatives may have a "theoretical predicate but are of no substantial moment in the particular case" 1/ and cannot stand up under tests of practical application. Furthermore, it is simply no answer to assert that perhaps an equally effective result could be achieved by a different means. Accordingly, in the absence of evidence showing the superiority of such alternatives over the proposal before us, the Examiner finds that no viable alternative to coordinated operations has been presented, nor is there any indication that such alternative would be forthcoming even after "exhausting inquiries probing for every possible alternative." 2/

The application in this proceeding in effect seeks a certificate modification of a method of operation requiring no new facilities and no change of existing certificates for the sale and transportation of interstate gas except as between the Applicants and as hereinabove referred to and disposed of. Accordingly, no purpose would be served by considering, and no attempt has been made to analyze, the other conventional requirements of public convenience and necessity, including markets, facilities, financing, and adequacy of gas supply within the framework of Kansas Pipeline and Gas Company, et. al., 2 FPC 29.

1/ Citizens for Allegan County v. Federal Power Commission
414 F2d 1125, 1134. (C.A.D.C. 1969)

2/ Ibid p. 1133.

In connection with the question of possible anti-competitive aspects of the proposed coordination of operations, suffice it to say, there already exists a high degree of integration between the Applicants; there is no evidence of competition between them; coordinated operations are designed to permit Home a greater latitude in competing for the future growth load of Rockland and Central Hudson; effectuation of the proposal would not result in any alteration of any market structure likely to permit anti-competitive conduct; and the general policy of the Natural Gas Act would be favored by facilitating the maintenance of rates at a competitive level. (See Staff Br. pp. 67-8.)

During the course of the hearing, Penn Gas injected the question of possible conflict of interest in the decisions of common officers and directors of the Columbia System companies in connection with avenues of storage development. There is not a scintilla of evidence to indicate that the decisions of such officers and directors were unfair or militated in favor of one company to the detriment of any other company of the system. On the contrary, such decisions were apparently "based upon every day business considerations of development such as size, location, market area and other potential factors used in making studies of potential storage fields." 1/ The record does not in any way support Penn Gas' suggestion of conflict of interest and it is rejected.

There remains for consideration Applicants' proposal to impose a minimum annual commodity bill in the proposed joint tariff which is to supersede the individual tariffs of the respective Applicants.

Proposed Minimum Commodity Bill

The Applicants seek to include a minimum annual commodity obligation in the proposed joint tariff as one of the contemplated operational changes incident to coordinated operations. Such obligation would apply to all customers purchasing gas under CDS rate schedules having a contract demand of 500 Mcf per day or more, 2/ requiring them to take or pay for an annual volume of gas equal to 60% load factor use of contract demand commencing November 1, 1968; at 62.5% commencing November 1, 1969; and at 65% commencing November 1, 1970 and thereafter. 3/ The said

1/ Staff Br. p. 70.

2/ There was no such limiting amount in the proposed joint tariff included as Exhibit P to the application.

3/ No such provisions are included in the separate effective tariffs of either Manufacturers or Home.

proposed minimum bill provision was modified during hearing to include a provision for waiver under certain conditions granting relief to customers in the event of loss of markets. (Tr. 15/1527)

Penn Gas is the only customer of the Applicants to voice any opposition to the proposed inclusion of the minimum bill provision in the joint tariff, and bases its opposition on the grounds of the resultant increased gas purchase costs and the restraints imposed upon its ability to obtain its gas supplies most economically. 1/ (Br. p. 64) It concludes that no "legitimate" reasons have been shown for the imposition of the "restraints" the minimum bill would impose, and that the Applicants "have failed to sustain their burden of proof to show that the imposition of the obligation is consistent with the certificate and rate standards of the Act." (Br. p. 64) In view of the fact that it is conceded by the Applicants that Penn Gas would be the only customer affected by the minimum bill provision 2/ its opposition is quite understandable.

The Staff also opposes the inclusion of the minimum bill provision concluding that "this record does not show that Manufacturers and Home required a minimum bill." (Br. p. 66)

The Applicants' witness, Mr. D'Agostino, testified that the minimum bill provision was required to "supply a reasonable and necessary element of stability in respect to the pattern of annual sales" and thus protect Home against the retreat from the near 100% load factor sales to Hudson and Rockland, which were induced by the lower commodity rate and the restructured tariffs, and reversion to the lower load factor pattern experienced historically by these customers in prior years. However, no substantial evidence was adduced to support any such possibility. On the contrary, it appears that it was the restructuring of Home's tariff, resulting in the reduction of Home's commodity charge and the accompanying increase in the demand charge, which enabled Central Hudson and Rockland to improve substantially their purchase load factor from Home. Accordingly, the continuation of the demand-commodity rate relationship in such restructured

- 1/ Because of the disposition made herein, no consideration has been given to any possible anti-competitive aspect of the proposal.
- 2/ Under the earlier version of the proposed minimum bill Columbia Gas of New York, Inc. and Iroquois Gas Corp. would also have been affected. (2/156-7)

"tariff, 1/ which had initially induced and triggered the increased load factor purchases, would make unlikely any reversion to the former low load factor purchases allegedly feared by Home. The minimization of the chances of cutbacks in the takes by these customers is further highlighted by the fact that Central Hudson has already improved the stability of its takes through the acquisition of interruptible industrial sales on a seasonal basis, (Tr. 7/724, 731, 733) thereby substantially removing even the alleged cutback threat. In any event, the takes of Rockland and Central Hudson are not dependent upon the outcome of this proceeding and the fate of coordinated operations since they would be the same under both noncoordinated and coordinated operations. 2/ The same conclusion is applicable to the threat of cutbacks in such takes. The threat, therefore, is not related to coordinated operations and neither is the remedy of the minimum bill provision sought to mitigate such threat. In view of the above, the real purpose for the inclusion of the minimum bill provision would appear to be the restraint sought to be imposed upon the only customer admittedly affected by such provision, to wit, Penn Gas, in order to "hamper the extent to which Penn Gas can abandon Manufacturers in favor of its other pipeline suppliers." (Applicants' Br. p. 59)

The evidence is uncontroverted to the effect that Penn Gas' contract demand purchase load factors from Manufacturers have declined steadily from 88% in 1967 to an estimated 54.9% for the contract year ending October 31, 1969, and, it is estimated, will continue to drop to 48% for the following years through October 31, 1973. (Tr. 2/157; see also Exhs. 29 and 30) Furthermore, the evidence indicates that Penn Gas plans a gradual abandonment of Manufacturers in favor of Transco (Tr. 2/158) and that it takes from Manufacturers on an average summer day are zero (Tr. 16/1787); and that its idea of a good operational day "is one when no gas at all is taken from Manufacturers." (Tr. 16/1787) However, notwithstanding such evidence and the obvious conclusion therefrom to the effect that Penn Gas may be swinging on Manufacturers because of the absence of a minimum bill provision, there is no showing of any economic injury or damage to Manufacturers resulting from such purchase pattern. The

- 1/ Home has categorically stated that it has no intention of abandoning its restructured tariff notwithstanding the outcome of the instant proceeding. (Tr. 2/174)
- 2/ Rockland's testimony is to the effect that it will continue to purchase gas at or near 100% load factor as long as Home's commodity charge remains at or near its present level whether or not coordinated operations are approved. (Tr. 7/695, 698)

insignificant Penn Gas sales in relation to the total transmission sales for resale of Manufacturers certainly indicates a possible reason for such omission. 1/

In any event, the evidentiary presentation to support the imposition of the proposed minimum bill in this certificate proceeding lacks the required quality to sustain the "burden of justification" required of a pipeline proposing a tariff change with a requirements feature. See Atlantic Seaboard Corp. v. Federal Power Commission 404 F.2d 1268, 1275.

While the substitution of the proposed joint tariff in place of the existing separate tariffs of the Applicants, in effect retaining the existing rate levels, zone boundaries and rate differentials, could be deemed a mere formal change without real substance, and without prejudice to any customer thereunder, the inclusion of the minimum commodity charge therein constitutes a proposed change in rates within the purview of Section 4 of the Natural Gas Act. Certainly, the burden of proof required to justify such change as being just and reasonable is upon the Applicants no less in this certificate proceeding than it would be in a proceeding under Section 4(e) of the Act. The evidence adduced at the hearing fails to sustain that burden and cannot support the findings required under Section 4 of the Act to the effect that the proposed change is just and reasonable and that no "person" is subjected "to any undue prejudice or disadvantage." 2/

On the basis of the record in this proceeding, it is found that the proposed minimum bill provision sought to be included in the joint tariff is not required by the public convenience and necessity. No reason appearing why the proposed minimum annual commodity bill should be adopted in this proceeding, the Applicants' proposal to include such provision in the proposed joint tariff is denied.

A prima facie showing has been made in these proceedings satisfying the requirements of Section 7 of the Natural Gas Act and establishing the basis for the finding that the coordination of Manufacturers' and Home's operations, as reflected in the application before us, is required by the public convenience and

1/ Sales to Penn Gas for the year 1968 amounted to 4,961,690 Mcf., or less than 2 percent of Manufacturers' total transmission sales of 269,865,009 Mcf. (Form 2)

2/ Cf. Atlantic Seaboard Corp. et al. 38 FPC 91; aff'd, Atlantic Seaboard v. Federal Power Commission 404 F.2d. 1268.

necessity. The evidence adduced either directly or upon cross examination of the Applicants' witnesses does not imbuoy such showing. Furthermore, the legal objections of Penn Gas do not merit rejection of such application. The certificate, however, will be conditioned in accordance with the findings and conclusions herein made to reflect the abandonment of a jurisdictional sale, the denial of the proposed annual minimum commodity bill, and the operational safeguards necessitated by, and arising out of, the coordinated operations.

ADDITIONAL FINDINGS AND CONCLUSIONS

The following findings and conclusions arrived at after consideration of the record made in these proceedings and the briefs and arguments of counsel are deemed supplementary, and in addition, to those hereinabove stated.

- (1) Manufacturers and Home are "natural gas companies" within the meaning of the Natural Gas Act;
- (2) Manufacturers and Home are subject to joint regulation by the Commission as a single jurisdictional entity for all regulatory purposes under the Natural Gas Act;
- (3) The coordination of operations for which the Applicants, Manufacturers and Home, seek authority as described herein, pertains to the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Federal Power Commission, and is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act;
- (4) Manufacturers and Home are able and willing properly to do the acts and to perform the services under coordinated operations as set forth in their joint application, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder;
- (5) The coordination of operations as proposed by the Applicants is required by the public convenience and necessity except the provision for the minimum annual commodity obligation, and a certificate therefor should be issued as hereinafter ordered and conditioned;
- (6) The Federal Power Commission has the authority to issue the certificate as conditioned herein.

- (7) Manufacturers and Home will maintain separate books regarding revenue received, property accounts and operating expenses in such manner that they may be readily identified and utilized by their customers and appropriate regulatory commissions and authorities in any future rate or other regulatory proceeding. The books shall reflect all deliveries of gas between them and shall contain such other records as may be required for appropriate analysis of their respective operations within the coordinated operations herein authorized. Separate and joint annual report forms will be filed with this Commission.
- (8) Within 18 months after the order approving coordinated operations becomes final, Applicants will file an application with the Commission requesting authorization for their full corporate merger.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

- (A) A certificate of public convenience and necessity is hereby issued to the Applicants herein authorizing the coordination of operations as proposed in their application subject to the terms and conditions of this order.
- (B) Within 30 days after the final order herein, Manufacturers and Home shall file with the Commission a joint FPC Gas Tariff, containing the terms and provisions as set forth in Exhibit P to the joint application herein as amended, except the minimum annual commodity bill provisions and reflecting zone rates corresponding with the individual rates of Manufacturers and Home then currently in effect, which joint tariff shall supersede and cancel the separate tariffs of Manufacturers and Home now in effect; no such zone rate differential shall be modified without prior Commission approval.
- (C) The service agreement between Manufacturers and Home is hereby cancelled. The abandonment of the jurisdictional sale of gas resulting from such cancellation is permitted under the provisions of Section 7(b) of the Natural Gas Act and is hereby approved.

- (D) Within 10 days after the final order herein, the Applicants shall furnish a copy of the operating agreement for the Commission's files, containing the terms and conditions as set forth in the form of agreement contained in Exhibit 56 and amended to conform to the provisions of the conditions set forth herein.
- (E) The Applicants shall maintain their books and records in accordance with paragraph (7) above.
- (F) The proposal to include the annual minimum commodity obligation in the proposed joint tariff is denied.
- (G) The public convenience and necessity require that the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act should attach to the certificate issued herein and to the exercise of the rights granted thereunder.



Max L. Kane
Presiding Examiner



The Manufacturers Light and
Heat Company
and Home Gas Company

Docket No. CP68-364

APPENDIX "A"

After this decision was written, the Court, in Penn Gas and Water v. Federal Power Commission No. 23051 rendered its decision, dated March 19, 1970, vacating the Commission's order granting the temporary certificate. However, the Court's opinion indicates the limited scope of its decision by stating "There may be economic support for a further action, of coordination that would permit operational readjustment resulting in a decrease of overall costs. This may well be in the public interest, but the decision should have been made in the context of a hearing." (mimeo p. 18) The Examiner believes, therefore, that the decision does not require any changes in the findings and conclusions made herein after a full evidentiary hearing.